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BENGAL TENANCY BILL.

RETURN to an Address of the Honourable The House of Commons, dated 31 March 1884;—*for*,

"COPIES of REPORT of the COMMITTEE of the LEGISLATIVE COUNCIL of INDIA upon the BENGAL TENANCY BILL:"

"And, of the AMENDED BILL."

India Office,
28 April 1884.

J. K. CROSS,
Under Secretary of State for India.

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(*Mr. Dalrymple.*)

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COPIES of REPORT of the COMMITTEE of the LEGISLATIVE COUNCIL of INDIA upon the BENGAL TENANCY BILL; and of the AMENDED BILL.

THE following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 14th March 1884:—

We, the undersigned Members of the Select Committee to which the Bengal Tenancy Bill was referred, have considered the Bill and the Papers noted in the Schedule hereto annexed, and have the honour to submit this preliminary Report.

2. We have recast the Bill, and have embodied in the revised Bill such alterations as commend themselves to the majority of us, but there are various points on which we consider that further information is requisite, and we recommend that the Bill as altered by us should be republished for further criticism, in the interval that will elapse before we resume our labours in November.

3. The present Report being only a preliminary one, several members of the Committee wish it to be recorded that they postpone the expression of their opinions on particular points until the final Report is submitted to the Council. It must also be understood that generally in referring to the decisions of the Committee we state the views of the majority.

CHAPTER II.

CLASSES OF TENANTS.

4. This chapter has been introduced for the purpose of describing the different classes of tenants with which the Bill deals. It will be seen from it that raiyats at fixed rates are now treated as a distinct class instead of being, as in the original Bill, a sub-class of tenure-holders. It will further be observed that the term "non-occupancy-raiyats" has been substituted for "ordinary raiyats," which latter term has been justly objected to as a misnomer. Lastly, it will be seen that tenants of homestead or Bastu land, which is not part of an occupancy-holding, have no place in the revised Bill. It may be that on further consideration it will be found desirable to introduce into the Bill some provisions relating to tenants of this class, but at present we have not before us the information requisite for dealing with the questions involved. It is clear that, owing to the various conditions which attach to the holdings of such tenants in different parts of the country, Chapter VII. of the original Bill would, if it were to be retained, need amendment in certain particulars. But we are unable to formulate this amendment, pending the receipt of further information, which we hope will be supplied by the Local Government.

5. In the section which relates to the distinction between tenure-holders and raiyats, we have endeavoured to describe, rather than to define, each class. Whilst recognising the expediency of laying down rules for the guidance of Courts in dealing with cases which lie near the border-line between the two classes, we retain the opinion that any attempt to frame a rigid definition of either class would tend to create, rather than to remove, difficulties.

CHAPTER III.

TENURE-HOLDERS.

6. The sections (14-17) of the original Bill relating to the right to hold at fixed rates have been removed to Chapter VIII. of the revised Bill, and will be more particularly referred to when we come to speak of that chapter. Section 20 of the original Bill, which contained a special provision relating to lands in temporarily-settled districts, has been transferred to the supplemental chapter.

7. We have made a considerable alteration in section 7, sub-section (3), which lays down the rules to be followed by the Court in enhancing the rent of a tenant in cases where the matter is not provided for by contract or custom. It is now simply enacted that the Court shall not leave the tenure-holder less than 10 per cent. of the profits, and in fixing the rent shall have regard to the circumstances under which the tenure was created, to the improvements made by the holder of it, and to the costs and risks of collection. We have left untouched the provisions that the enhanced rent should not be more than double the previous rent and that it should hold good for 10 years.

8. The special provisions of the original Bill relating to patní tenures, with the exception of the definition section (36), which has been transferred to the preliminary chapter, and the section (42) regarding summary sale, which has been placed in the chapter relating to that subject, have been included in this chapter.

9. Of the alterations we have made in the sub-division of this chapter relating to registration of transfers and successions, the following only seem to call for notice, namely:—

(1.) The addition to sub-section (1) of section 15 of a proviso allowing a landlord to refuse to register a transfer of a tenure if any rent is in arrear;

(2.) The abolition of the additional fee imposed by section 27 (2), clause (*b*), of the original Bill as a penalty for delay in applying for registration, and the insertion of a clause fixing the fee at 2 rupees where no rent is payable by the tenure-holder [section 15 (2)];

(3.) The addition to section 18 of a sub-section providing that a person becoming entitled to a tenure by transfer or succession shall not be entitled to recover rent by suit, distraint, or other proceeding until the transfer or succession has been registered or a notice of it has been served on the landlord; and,

(4.) The amendment of the section (now section 21) relating to the granting of copies of entries in the register, so that the fee for every copy granted shall be such amount, not less than one anna or more than one rupee, as the Local Government may fix.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

10. In the matters of transfer and succession we have assimilated the conditions of the settled-raiyat holding at fixed rates to those of tenure-holders. It was suggested that this class of raiyats should be sub-divided into (*a*) those holding under a registered lease or judicially declared title, and (*b*) those holding at fixed rates under the statutory presumption, the former being assimilated to tenure-holders and the latter to raiyats with a right of occupancy; but the majority of us were unable to accept this proposal.

CHAPTER V.

Occupancy-Raiyats.

11. The main lines of this chapter, so far as regards the acquisition of the status of a raiyat and the right of occupancy, remain unchanged, and we have only to mention such alterations in the details as appear to us to call for notice.

Our attention has been drawn to the inconvenience which may arise in certain exceptionally large estates, such as those of the Mahárájá of Burdwan and others, from the status of settled-raiyat holding good over the whole estate. We desire to learn if the Government of Bengal consider that in these exceptional estates any known fiscal or administrative area can be advantageously substituted for the area of an estate.

12. Another matter connected with the definition of "estate" for the special objects of this chapter, to which we desire to draw attention, is the provision in Section 27 (*b*) to the effect that where a partition has taken place "since the first day of January 1853" the parent estate shall, notwithstanding the partition, be regarded as a single estate. The date mentioned was chosen because it was understood that it might reasonably be expected that from about that time complete records of partitions would be forthcoming; but the particular point of time to which we should go back is of course open to further consideration, and accordingly we have directed that the words fixing it shall be shown in italics.

13. We have, at the instance of the Government of Bengal, inserted in Section 26 (definition of settled-raiyat) a sub-section (2) providing that when it is proved or admitted that a person holds land as a raiyat, it shall be, as between him and his landlord, presumed for the purpose of the section, until the contrary is shown, that he has for 12 years held the land or some part of it as a raiyat. Such a presumption appears to us to be warranted by the existing state of things in the Lower Provinces, and, while it tends to simplify litigation, it is one which the landlord ought to have no difficulty in rebutting in any case in which it does not hold good.

14. We have [section 26 (6)] retained in substance the provision of the original Bill under which a person does not lose his status as a settled-raiyat merely by the accident of his being out of possession of a holding in the village or estate for any time not exceeding one year, but have added to it a clause [sub-section (7)] to the effect that if he recovers possession of any land under Section 96 (as to which see *infra*, paragraph 66) he shall be deemed to have continued to be a settled-raiyat, notwithstanding his having been out of possession for more than a year.

15. The chapter relating to merger having been omitted from the Bill for reasons to be explained further on, we have thought it desirable, in order to prevent any misapprehension, to insert in this chapter a section (28), providing that, if the landlord of a raiyat having a right of occupancy acquires the interest of the raiyat by purchase or otherwise, the occupancy-right shall cease to exist, but that nothing in this provision shall prejudicially affect the rights of any third person.

16. We have omitted Section 48 of the original Bill, which provided for the acquisition of the occupancy-right by grant, and have substituted for Section 49 of that Bill relating to the acquisition of the occupancy-right in lands of the classes comprised under the term khámár as there defined, a section (30) simply providing that nothing in the chapter shall confer a right of occupancy in lands of those classes where such lands are held under a lease for a term of years, or under a lease from year to year.

17. We have, in affirming that the raiyat may use the land in any manner that does not render it unfit for the purposes of the tenancy, added [Section 31, Clause (*a*)] that he shall not cut down trees thereon in contravention of any local custom.

18. In the division which relates to the landlord's right of pre-emption, and which is now headed "restrictions on transfer," we have [in Section 32 (4)] provided that the landlord, if he elects to purchase, must tender the price within one month from the date on which it is agreed on or fixed, and we have also inserted words to allow the raiyat, if his landlord claims to purchase, the option of keeping the land.

19. We have further inserted in the same section a sub-section (5) providing that if the raiyat attempts to sell in contravention of the provisions of the section the sale shall be void as against his landlord.

20. We have omitted Section 55 of the original Bill, which gave the landlord a right of pre-emption when the occupancy-right is bequeathed.

21. As regards gifts of the occupancy-right, we believe that the great majority of such gifts would be either of the nature of bequests or of merely fictitious transactions covering sales. It is only in the case of gifts of this latter class that the landlord seems to us to stand in need of any protection, and we think that sufficient protection will be afforded him by requiring that a gift must be made by a registered instrument, and that a copy of the instrument shall be forthwith served on the landlord, so as to give him an opportunity of questioning the transaction if he sees any ground for believing that it is not *bonâ fide*. We have, however, exempted from this requirement gifts by Muhammadans to persons within the prohibited degrees, as such gifts are usually substitutes for testamentary dispositions (Section 35).

22. Lastly, we have added a section (36) restricting the right of pre-emption to proprietors and permanent tenure-holders, and other tenure-holders authorised by them to exercise it, as it seems to us that the exercise of such a right by a temporary tenure-holder, otherwise than with the permission of a superior landlord having a permanent interest in the land, would give rise to difficulties and complications which it is desirable to avoid.

23. Great objection has been taken to Section 56 of the original Bill, which provided that when a landlord acquires the occupancy-right, any raiyat afterwards taking the land shall have an occupancy-right in it; this section we have omitted.

24. We have also omitted Section 57, which conferred the status of a settled raiyat on every person inheriting an occupancy-right in land. The object of this latter section seems to us to be sufficiently secured by Section 26 (4).

25. The next division of this chapter, headed "restrictions on sub-letting," is new. It is based on certain proposals put forward by the Government of Bengal, and having for their objects to discourage the purchase of the occupancy-right by non-agricultural speculators, and to protect the sub-lessee of a raiyat. This latter object, we may observe, could be only in part carried out by the provisions inserted here. Further provisions for securing it will be found in Chapter VII., relating to under-raiyats, of which we shall presently have to speak.

26. The main enactments in this sub-division of the chapter are—

1st. That if the portion of his holding sub-let by an occupancy-raiyat exceeds half the holding, he shall, on being registered in a public register as a tenure-holder under an Act, which the Local Government propose to introduce into the Bengal Council for this purpose, be deemed to have become a tenure-holder, the result of which will be that his sub-lessees will become raiyats, with an actual or potential right of occupancy (Section 37).

2nd. That if a raiyat sub-lets his holding or any part of it, the sub-lease shall not be valid for a period exceeding seven years (Section 38).

These enactments are qualified by certain provisions, the most important of which are—

1st. That they shall not apply to the case of a raiyat who is compelled to sub-let by being disabled from cultivation by age, sex, disease, accident, or temporary absence from home in certain cases; and,

2nd. That

2nd. That when a raiyat is converted into a tenure-holder, as above mentioned, his rent shall be liable to enhancement on the same terms, and subject to the same conditions as if he were an occupancy-raiyat, and thus the position of his landlord will, in this respect, remain unaffected.

27. These provisions gave rise to considerable difference of opinion, and we are not insensible of the inconvenience arising from allowing a change to be created in the legal relations of a raiyat, both towards his landlord on the one hand, and towards his own sub-tenants on the other, as the result of his own acts; a change, moreover, which must be determined by an arbitrary line difficult to ascertain, and complicated by the numerous exceptions which the circumstances of the cultivators obviously demand. There seemed, however, to the majority of us to be no better way of placing restrictions on sub-letting (a practice which it is admittedly impossible to prohibit) than by rendering the sub-letting raiyat liable to the summary sale for arrears, which is to be made applicable to tenures, and at the same time enabling his sub-tenants to acquire rights of occupancy. These provisions illustrate the extreme difficulty of placing any substantial check on the practice of sub-letting, when it has once grown up. It will be observed that the converted tenure-holder, while liable to enhancement as an occupancy-raiyat, is in all other respects treated as a tenure-holder, and acquires with the liability to summary sale other incidents of tenure holders, such as exemption from the pre-emption clauses, but that none of these provisions will come into operation until such time as he is registered. It was felt that to throw on the Courts the duty of ascertaining in a simple rent suit all the complicated conditions, which are connoted by his conversion, would be intolerable, and that the difficulty could only be met by the Local Government ascertaining and registering them. This it has undertaken to do.

28. The alterations which we have made in the provisions relating to the enhancement of the rent of occupancy-raiyats are considerable, both as regards form and substance.

We have removed the provisions relating to enhancement by means of a table of rates to a separate chapter following that relating to the record-of-rights and settlement of rents, and deal here only with enhancement in the ordinary way by contract or by a suit in Court.

29. As the Bill now stands amended the rent of an occupancy-raiyat cannot be enhanced by contract unless the contract is registered, and the following rules will apply to every such contract (section 41) :—

(1.) The rent must not be enhanced so as to exceed by more than four annas in the rupee (25 per cent.) the rent previously payable by the raiyat.

(2.) The contract must fix the rent for a term of at least seven years.

(3.) If the enhanced rent exceeds by more than two annas in the rupee ($12\frac{1}{2}$ per cent.) the previous rent, the contract must fix the rent for a term of at least 15 years.

(4.) The registering officer must, before registering a contract under this section, ascertain whether the contract is in accordance with the provisions of the Act, and that the raiyat entering into it acts as a free agent. It will be observed that under the revised section the registering officer, instead of being required to approve a contract and to satisfy himself that it is fair and equitable, is now merely required to satisfy himself that it is in accordance with the provisions of the Act.

30. Further, it is provided (section 42) that where land, which has been previously held by a tenant at a money-rent, is let to a settled-raiyat of the village or estate in which it is situate, that raiyat shall not be bound to pay for it any rent higher than that which was paid for it by the previous tenant, except in pursuance of a registered contract, and that the rules just referred to shall apply to every such contract.

31. As regards enhancement by suit our object has been, while laying down rules which will be substantially just to both landlords and tenants, to devise a system which would avoid those elaborate and difficult inquiries, the necessity

for which has made the present enhancement law an almost useless instrument in the hands of the landlords.

With this view we have specified the grounds on which an enhancement suit can be instituted, as follows (section 43) :—

(*a.*) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy raiyats for land of a similar description and with similar advantages in the vicinity.

(*b.*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c.*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d.*) That the productive powers of the land held by the raiyat have been increased by fluvial action.

32. An inquiry had shown that an authoritative table of rates could be prepared by the Government of Bengal only for exceptional tracts, and no other general method has been submitted to us for placing before the Courts the information with respect to productive powers of the land which would enable them to apply the rules for enhancement on the ground of increase in those powers. But the zemíndárs objected to the total elimination of this as a legal ground of enhancement, and as it was part of the old law it has been retained. Enhancements on this ground when the increase is caused by the landlord's improvement will be facilitated by the system of inquiry and registration provided for hereafter; but enhancements on the ground of increase of productive powers caused by fluvial action will still, we fear, be liable to the same difficulty, caused by the absence of any proof of the former productive powers of the soil, as has rendered this ground of enhancement futile in past years.

33. On the other hand enhancement on the ground of prices would be greatly facilitated by the preparation of authoritative price lists by the local government. It should be explained that the price lists of staple food crops are to be taken simply as indicating a general rise or fall in prices, and without any reference to the particular crop grown on the land, the rent of which is in dispute; and our intention is that the price lists should be worked out very much on the principle on which the commutation of tithes according to average prices is worked out in England as explained at pages 250 *et seq.* of Mr. Justice Field's Digest.

34. It has been urged that, in applying the proportion rule in the case of prices, some deduction should be made to cover the effect of these increased prices on the cost of cultivation. We are however content for the present to leave the protection of the raiyat in this respect to the other restrictions on enhancements, especially to Section 48, which provides that the Court shall not in any case decree an enhancement, which appears under the circumstances of the case to be unfair or inequitable. But the point will receive further consideration when the alterations made in this chapter have been subjected to public criticism.

35. The difficulty which, as we have explained, stands in the way of enhancement on the ground of an increase in the productive powers of the land, applies with no less force to the proposal to limit the maximum enhanced rent to one-fifth of the average annual gross produce. The majority of the Committee were of opinion that it would be almost impossible to ascertain in each instance the average annual gross produce expressed in staple crops, and weighty objections have also been taken to the principle underlying that proposal. We have accordingly struck out the provision to the above effect contained in section 75 (*d*) of the original Bill. As a set-off against this we have increased the stringency of another limitation contained in the original Bill by providing that, when rent is enhanced on the first ground mentioned above, the enhancement shall not amount to more than 8 annas in the rupee (50 per cent), and that when it is enhanced on the second or fourth of those grounds, the enhancement shall not amount to more than 4 annas in the rupee (25 per cent.), and by providing, as above stated, that the Court shall not in any case decree an enhancement which appears

appears under the circumstances of the case to be unfair or inequitable (section 48).

36. In connection with enhancement up to the prevailing rate payable by occupancy-raiyats of the same class, we have in section 44 introduced a clause [(*c*)], based on section 20 of the North-Western Provinces Tenancy Act, providing for cases in which local custom may make it necessary to take into consideration the caste of a raiyat.

37. As regards enhancement on the ground of an improvement made by the landlord, we have laid down no hard-and-fast rule, but have merely provided [section 46 (*b*)] that in determining the enhancement to be allowed the Court shall have regard to—

(i.) The increase in the value of the produce caused by the improvement;

(ii.) The cost of the improvement;

(iii.) The cost of the cultivation required for utilising the improvement; and

(iv.) The existing rent and the ability of the land to bear a higher rent.

And in order to avoid perplexing inquiries into matters long past, we have provided [section 46 (*a*)] that the Court shall not grant an enhancement unless the improvement has been registered, that is to say, registered in accordance with the rules which are laid down in Chapter IX., and which, as will be seen, are so framed as to secure that all requisite information will be duly placed on record.

38. The leading rule adopted by us for enhancement on the ground of increase of productive power arising from fluvial action is suggested by that proposed by the Rent Commission, and is to the effect that the landlord shall not have more than half the value of the net increase in the produce of the land [section 47 (*c*)].

39. Section 78 of the original Bill, which limited the right to bring successive enhancement suits, has now (section 50) been restricted to suits on the ground that the rent paid is below the prevailing rate, and suits on the ground of an increase of prices; but the restriction will now apply to cases in which a suit for enhancement has been dismissed on the merits as well as to cases in which enhancement has been decreed, and the period which must elapse between successive enhancements has been extended from 10 to 15 years.

40. The grounds on which a suit for reduction of rent may be brought are in the amended Bill (section 51) limited to the following:—

(*a.*) That the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other like calamity, and

(*b.*) That there has been a fall in the average prices of staple food crops in the locality.

In either case the Court is to direct such reduction of the rent as it thinks fair and equitable.

41. Section 52 of the amended Bill, which provides for the preparation of authoritative price-lists, differs from the corresponding section of the original Bill in certain particulars; but the only alteration which we need notice here is, that the new section empowers the Local Government to direct price-lists to be prepared for past years as well as for current years. Materials for such price-lists exist in the statements of prices published regularly by the Bengal Government during the past 12 years, and, if it be possible to correct these lists and render them a trustworthy record of local prices, the work of the Courts in enhancing rents on the ground of a rise in price will be greatly simplified.

42. Section 80 of the original Bill, which provided for the enhancement of the rent of pasture lands, has been omitted, as it is understood that the letting of

land to individual tenants for grazing purposes is so very rare that no special rules are needed to regulate it.

43. Section 81 of the original Bill, which prescribed a limit to the amount of the rent payable in kind by an occupancy-tenant or varying with the crop, has likewise been omitted, because it was found that local usage on the point was exceedingly complicated, large deductions being usually made from the crop for various purposes before dividing it, and that to draw a hard-and-fast line would very probably mislead the courts and have an injurious effect.

44. The section (53) providing for the commutation of rent payable in kind has been recast on the lines of section 16 of the Central Provinces Tenancy Act, 1883. As it now stands it admits of an application for commutation being made to certain officers, either by the landlord or the tenant, and empowers the officer to whom it is made to refuse it if it is opposed. Further, the new section allows a larger discretion than the original section in determining the amount of the money-rent to be paid. It merely provides that in making the determination the officer shall have regard to,--

(*a.*) The average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity, and

(*b.*) The average value of the rent actually received by the landlord during the preceding 10 years.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

45. Section 89 of the original Bill provided that the non-occupancy-raiyat, or, as he was termed in that Bill, the "ordinary raiyat," should pay such rent as might be from time to time agreed on between him and his landlord, but subject to the provisions of section 119, which made 5-16ths of the average annual value of gross produce the maximum of the rent. We now propose to abandon this maximum for the reasons which led us to abandon the corresponding maximum in the case of the enhancement of an occupancy-raiyat's rent, and the question accordingly arises whether any other restriction should be placed on contracts fixing the rent of the non-occupancy tenant. The majority of us are opposed to any such restriction, and accordingly the amended Bill leaves the parties free except in so far as it provides (section 57) that the rent shall not be enhanced after the raiyat has been admitted into occupation of the land, except by registered agreement or in the manner allowed by certain sections of the chapter to be presently noticed.

46. In section 58, which states the grounds on which a non-occupancy-raiyat is liable to be ejected, we have introduced a clause permitting him to be ejected when he has, for the first time, been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired; but we have provided in the following section (59) that a suit for ejectment on this ground shall not be instituted unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

47. We have also decided to strike out the clause giving the non-occupancy-raiyat compensation for disturbance, but have provided in lieu thereof (section 60) that when an ejectment suit is brought against a non-occupancy-raiyat on the ground of his refusal to pay an enhanced rent, the Court shall fix a fair and equitable rent, and the raiyat shall have the option of holding on at that rent for a term of five years, after which he will be liable to be ejected on the same conditions as after the expiry of an initial lease, provided rights of occupancy have not accrued to him in the meantime.

CHAPER VII.

Under-Raiyats.

48. We have already (*supra*) paragraphs 26 and 27 referred to the new provision introduced into the Bill which, by converting an occupancy-raiyat who sub-lets half his land into a tenure-holder, confers upon his sub-lessees the status and advantages of raiyats The chapter now under consideration provides a certain amount of proteetion to under-raiyats who are not entitled to the benefit of that provision.

Section 62 provides that the landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following per-centage of the same, namely :—

(*a.*) When the rent payable by the under-raiyat is payable under a registered lease or agreement—50 per cent.; and

(*b.*) In any other case—25 per cent.

And Section 63 provides that an under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year, and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

CHAPTER VIII.

General Provisions as to Rent.

49. This chapter opens with the provisions relating to the right of tenure-holders and raiyats to hold at a fixed rent, which have been transferred from the opening of the original chapter relating to tenure-holders. The only change made in these provisions which seems to call for notice here is the addition of a clause to Sub-section (2) of Section 64, providing that, if an enactment should hereafter be passed requiring the registration of permanent tenures or of tenancies at fixed rates, the well-known presumption from 20 years' holding shall cease to apply to any tenancies which are not registered within the time fixed. The Local Government, we understand, propose shortly to introduce into the Bengal Council a Bill establishing a registration system of the nature just referred to, and, if that Bill becomes law, it will, we believe, with the aid of this clause, afford, so far at least as those classes of tenancies are concerned, the best remedy for the hardship which the landlords complain of as caused to them by the retention on the Statute Book of the presumption in question. The above presumption will also cease to apply when a record-of-rights has been prepared (see *infra*, para. 77).

50. In Section 66 (2), we have omitted the hard-and-fast rule laid down in the corresponding Section (96) of the original Bill, that in calculating the addition to be made to the rent of a tenure on account of an addition to the area comprised in it, 30 per cent. should be allowed for profits, risk and cost of collection; and have merely provided that the court shall have regard to the profits to which the tenure-holder is entitled in respect of the rent of his tenure.

51. In the Section (67) relating to instalments of rent we have omitted as unnecessary the somewhat complicated proviso appended to Section 98 of the original Bill.

52. We have in Section 68 inserted a clause empowering the Local Government to try the experiment of making rules authorising a tenant to pay his rent by postal money-order; a mode of payment which we think may in some cases be found convenient.

53. In Sections 70 and 71 we have, instead of stereotyping the contents of the receipts and accounts to be furnished to tenants, given forms of these

documents (in a schedule), and empowered the Local Government to alter them as convenience may require.

54. We have in Section 70 (4), relaxed the stringency of the corresponding provision [Section 100 (4)] of the original Bill, by providing that a receipt not containing substantially the required particulars shall merely be "presumed until the contrary is shown" (instead of "deemed") to be an acquittance in full of all demands up to date.

55. It has been suggested that we should provide for applications for the withdrawal of rent deposited being exempted from court fees. We think such an exemption desirable, but it is within the power of the executive authorities to arrange for its being made, and we prefer to leave the matter in their hands.

56. We have, in the Section (78) providing for ejectment from a non-transferable holding for arrears of rent, added a sub-section empowering the court for special reasons to extend the period allowed for the payment of the rent.

57. We have empowered the collector to depute an officer to divide or appraise the produce of a bhaoli holding, not only on the application of one of the parties concerned, but also in any case in which, in the opinion of the magistrate of the district or sub-division, such action would be likely to prevent a breach of the peace [Section 81 (2)].

58. We have further empowered the collector in all cases to pass such order as he thinks just on the report of the officer deputed, and have provided that his order shall be final and be enforceable as a decree, unless he thinks fit to refer any question in dispute between the parties for the decision of a civil court [Section 82 (4) and (5)]. This seems to us a simpler and more convenient procedure than leaving the parties to seek redress in the civil court in the first instance, as under the original Bill.

59. For Section 117 of the original Bill we have substituted a section (set out in the margin)* (*see foot-note*) dealing comprehensively with the rights and liabilities of the landlord and tenant as to possession of the crop in cases where rent is taken by appraisement or division of the produce.

The penal provision of Section 117 of the original Bill has not been reproduced here, as the matter is sufficiently provided for in the more general penalty clause now inserted in Chapter XIX. (Section 220.)

CHAPTER IX.

Miscellaneous Provisions as to Landlords and Tenants.

60. We have introduced a new Section (88) providing that when a raiyat holds at a fixed rent or fixed rate of rent, his landlord shall not be entitled to prevent him from making an improvement.

61. We have in Section (89 (3) empowered the collector to decide finally any question between an occupancy-raiyat and his landlord—

(*a.*) As to the right of the raiyat to make an improvement, and

(*b.*) As to whether a particular work is an improvement.

62. We have, in order to facilitate the decision of disputes regarding improvements, introduced a Section (92) based on Section 80 of the Central Provinces Tenancy

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* Rights and liabilities as to possession of crop :—83. (1.) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2.) Where rent is taken by division of the produce, the tenant shall be entitled to exclusive possession of the whole produce until it is divided.

(3.) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord, but shall not be entitled to remove any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time.

(4.) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Tenancy Act, 1883, providing that a landlord or tenant, desiring to have any evidence recorded regarding an improvement which has been made, may apply to a revenue officer to record it, and that the record so made shall be admissible in subsequent proceedings between the parties. We have also, as intimated (*supra*, para. 37) introduced a Section (91) providing for the registration of improvements made by landlords.

63. Section 129 (4) of the Bill as introduced, provided that improvements made by a raiyat before the commencement of the Act should be deemed to have been made in accordance with the Act unless it was shown that the landlord forbade the raiyat to make the improvement, and was ready to make it himself. For this we have substituted a sub-section [Section 93 (4)], providing that improvements made by a raiyat between the 2nd day of March 1883 (the day on which the Bill was introduced) and the commencement of the Act, shall be deemed to have been made in accordance with the Act. This prevents the section from applying retrospectively to any improvements made before the introduction of the Bill.

64. We have in Section 94 somewhat enlarged the list of matters to be taken into consideration by the court in estimating the compensation to be allowed for an improvement, the most important additions being the condition of the improvement with reference to its duration, and that "in the case of a reclamation, or of the conversion of unirrigated into irrigated land," the court shall have regard "to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent."

65. We have re-drafted the Section (95) relating to surrender by a tenant, on the lines of Section 33 of the Central Provinces Tenancy Act, 1883, and, in order to remove a misapprehension which appears to exist in some quarters, have added a sub-section (5) expressly providing that when a raiyat has surrendered his holding, the landlord may enter on the holding, and either let it to another tenant, or take it into cultivation himself.

66. The difficulties which arise in cases where a raiyat to all appearance abandons his holding, but the landlord cannot be sure whether he can safely assume the holding to have been abandoned, and let it to another tenant, we have attempted to meet by the section set out in the margin* (*see foot-note*).

67. We have in section 99, which prohibits a landlord from measuring land more than once in 10 years without the consent of the tenant or the permission of the collector, allowed exceptions in the following cases, namely:—

(*a.*) Where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area.

(*b.*) Where the area under cultivation is liable to vary from year to year, and the rent payable depends on the area under cultivation.

(*c.*) Where the landlord is a purchaser otherwise than by voluntary transfer, and not more than two years have elapsed since the date of his entry under the purchase.

68. In section 101, relating to the standard of measurement, we have introduced a sub-section empowering the Local Government after local inquiry to make rules declaring for any local area the standard or standards of measurement in use, and have provided that every such declaration shall be presumed to

* Abandonment:—96. (1.) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2.) When a landlord enters under this section he shall cause a notice in the prescribed form to be published in such manner as the Local Government, by rule, directs, stating that he has treated the holding as abandoned and has entered on it accordingly.

(3.) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may order recovery of possession on such terms, if any, with respect to compensation to persons injured as to the Court may seem just.

to be correct until the contrary is shown. This, we think, will render section 138 of the original Bill unnecessary, and we have accordingly omitted it. Other provisions connected with measurement will be found in the chapter (X.) concerning the record of rights.

69. In the division of this chapter relating to the appointment of a manager to act on behalf of co-owners of an estate or tenure, we have added a section (109), empowering the High Court to make rules defining the powers and duties of managers.

70. We have omitted the section relating to merger. It was in our opinion open to serious objection, not only from the particular point of view of the framers of the present Bill, inasmuch as it allowed of the occupancy right being retained in the hands of a landlord, his tenants being thus reduced to the position of under raiyats, but also from a more general point of view, inasmuch as it conferred on individuals a large and arbitrary power to introduce, without any sufficient reason, a serious complication into the law of property, and one moreover which would be likely to serve as a cloak for fraud.

The immediate requirements of this Bill are, we think, sufficiently met by the section (28), which we have introduced into the occupancy chapter, and to which we have already referred (*supra*, para. 15); and for the rest we are of opinion, after giving our best consideration to the views of the Honourable Mr. Justice Field, that the general question of merger is somewhat outside the proper scope of the present enactment.

CHAPTER X.

Record of Rights and Settlement of Rents.

71. We have found it convenient to embody in a single chapter the two chapters of the original Bill relating to the above subjects, and to start with the record of rights, which is the simpler of the two.

72. The difficulty from the absence of a record occasionally felt, especially by a person who purchases an estate or tenure at a compulsory sale by auction, will, we think, be met by the new section (112), which admits, subject to certain conditions, of a record of rights being framed by a revenue officer on the application of a proprietor or tenure-holder.

73. As regards the procedure in framing a record-of-rights, it will be observed that an important change has been made. Under Chapter XII. of the original Bill the procedure was to be summary in all cases, whether there was or was not a dispute as to the entry which ought to be made in the record, and the result in all cases alike would have been merely an entry in the record, which would be *primâ facie* presumed to be correct, but would be open to be impugned in a civil court. In the amended Bill, on the contrary, a fuller opportunity is allowed for raising objections by a preliminary publication of the record, and if any entry, which it is proposed to make or which has been made, is called in question, the revenue officer is to inquire into the dispute according to the regular procedure of a civil court, and his decision is to have the force of a decree, and to be appealable first to a special judge appointed to hear such appeals, and then, subject to the usual limitations of second appeals, to the High Court. Thus, in any case in which there is a dispute regarding an entry in the record, the question will be placed on the footing of a *res judicata*. Where, up to the time allowed after the preliminary publication of the record for preferring objections, no objection is made, the entry will be marked as undisputed, and, as proposed in the original Bill, will simply be presumed to be correct until the contrary is proved. We think that, having regard to the large scale on which those operations will be conducted, and to the impossibility of being sure that any sort of publication would bring home to every individual concerned the precise nature of the entries being made regarding him, we could not venture to give an undisputed entry any authority higher than that just mentioned.

74. The operation termed a "settlement of rents" includes, in addition to the preparation of a record-of-rights, the settlement of all such rents of occupancy-

pancy-tenants and tenure-holders holding otherwise than at fixed rents, as either the landlord or the tenant may apply to have settled.

The questions whether a rent is open to settlement, and, if so, the amount at which it should be settled, are of a complex nature depending on two very different sets of considerations. They depend in the first place on issues, relating to such matters as the existence of the tenancy, the extent of the land, the status of the tenant, the conditions under which he holds, &c., and possibly involving points of law which could not satisfactorily be decided without the security afforded by an ultimate appeal to the highest judicial authority. They depend in the second place on considerations of an economical nature, such as the state of prices prevailing at different periods, the effect of improvements, and so forth, which it is universally admitted cannot be adequately dealt with either in the first instance or on appeal except after local inquiry and by persons possessed of special technical knowledge. The problem before us has been how best to provide for the separation of these two elements, so that each may be dealt with, and finally dealt with, by those most competent to deal with it. The solution of this problem proposed in the original Bill will be seen on referring to Section 160 of that Bill. The modification above described in the record-of-rights procedure, and especially the introduction of the special judge, who will doubtless always be an officer possessing a familiarity with the local agricultural system, in addition to judicial qualifications, has opened the way to what appears to us to be a more satisfactory solution. What we propose is that when a rent, which has been settled or which it is proposed to settle, is disputed, the dispute shall be dealt with by the revenue officer in the same way as a dispute regarding an entry in the record-of-rights, that an appeal on the whole question shall then lie to the special judge, and that his decision shall be final unless, in a second appeal in respect of one of the record-of-rights entries with reference to which the rent has been settled, the High Court alters the decision of the special judge. In this case the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be, on the ground that the special judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

75. We have, in Section 120, provided that, when a landlord is entitled under the foregoing sections to apply to have the rent of a holding settled, the rent of the holding, whether he applies and has it settled or it is merely ascertained, shall not be enhanced for 15 years, except on the ground of an improvement made by the landlord or of an increase of the area of the holding.

76. Section 121, providing for the payment of expenses, has now been made applicable to the preparation of a record-of-rights as well as to the settlement of rents.

77. The only other provision of this chapter which appears to call for notice is the new section (122) which enacts that when the particulars of a tenancy have been recorded under the chapter, the well-known presumption arising from 20 years' holding at a fixed rent shall cease to apply.

CHAPTER XI.

Tables of Rates.

78. We have been guided, in dealing with the subject of this chapter, by the views of the Government of Bengal. It appears from the inquiries that have been made that, owing to the great diversity of rates, it would in most parts of the country be impracticable to frame general tables of rates applicable to large tracts; but in special tracts the preparation of such tables may still, in the opinion of the Government of Bengal, be found a preferable alternative to the plan of a general settlement of rents by the revenue officer. In the latter case the revenue officer goes on the ground and himself decides all questions at issue.

In the former case the revenue officer merely ascertains and records general facts which will serve as a guide to the Courts, whose business it will be to apply them to the circumstances of particular disputes brought before them. We have, therefore, retained the procedure with only a few minor alterations, but it will no longer be so important a feature as it was in the original Bill.

CHAPTER XII.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

79. In dealing with the difficult question of khámár or zeraat land we have provided two alternative methods of procedure—

(*a.*) That of survey and registration of such land by a revenue officer, by order of the Local Government;

(*b.*) That of inquiry on the application of the individual landlord or tenant concerned.

The former procedure would apply to large areas where the question is important, the latter to disputes about particular plots of land. At the request of the Government of Bengal the two methods of procedure have been left equally applicable to any part of the country. We have made no distinction in the description of this land between Bengal and Bihár, but we have directed regard to be had in every case to local custom, and, while making it incumbent on the revenue officer to record certain lands as the proprietor's private land, have endeavoured to assist him by certain guiding rules in cases not clearly coming under these heads. The section is reproduced below.

Rules for determination of proprietor's private land.

138. (1.) The revenue officer shall record as a proprietor's private land—

(*a.*) Land which is proved to have been cultivated as khámár, zeraat, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for 12 continuous years immediately before the passing of this Act, and—

(*b.*) Cultivated land which is recognised by village-custom as proprietor's khámár, zeraat, sír, nij, nij-jot or kamat.

(2.) In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the 2nd March 1883, specifically let as proprietor's private land, but shall presume that land is not a proprietor's private land until the contrary is shown.

(3.) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of revenue officers.

CHAPTER XIII.

DISTRAINT.

80. The only changes made in this chapter to which it seems to us necessary to direct attention are the following:—

(*a.*) Section 167 (2) of the original Bill, which made an application for distraint liable to the same Court fee as a suit for the arrear of rent, has been omitted.

(*b.*) Produce already stored has been exempted from distraint.

(*c.*) The Court is empowered [Section 141 (3) and (4)] to issue in certain cases an order prohibiting the removal of the produce pending the issue or execution of an order of distraint.

(*d.*) It has been made clear (Section 147) that crops which admit of being stored are not to be sold standing.

(*e.*) Section 186 of the original Bill, which under certain circumstances imposed a penalty on persons on whose behalf an offence under Section 185 is committed, has been omitted.

(*f.*) On

(*f.*) On the other hand, express provision has been made in the first section of Chapter XIX. for punishing abetment of the offences in question, and it has been made clear (Section 158) that a p rson, whose property is distrained under cover of this chapter, but in a case to which it does not properly apply, has his remedy by suit against those who put the Court in motion.

(*g.*) Section 187 of the original Bill, which empowered the Local Government to suspend the operation of the chapter, has been omitted.

CHAPTER XIV.

Judicial Procedure.

81. We have excluded suits for penalties and suits for the recovery of possession of land from the special procedure prescribed in sections 191–197 of the original Bill.

82. We have introduced at the opening of this chapter a section (159), modelled on a section in the Presidency-towns Small Cause Court Act, empowering the High Court, with the approval of the Local Government, to make rules declaring that any portions of the code of civil procedure shall not apply to suits between landlord and tenant, or shall apply subject to modifications. We trust that as experience is acquired of the working of the Courts under the new Act it may be found possible to exercise this power so as to effect further simplifications in procedure.

83. For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

84. We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an important amendment in the section (164) which requires a tenant, admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent-suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

85. We have further added a section (165) providing that when a defendant in a rent-suit admits that money is due from him to the plaintiff, but disputes the amount, the Court shall, as a rule, require him to pay the amount admitted into Court.

86. We have provided (Section 173) that when a plaintiff institutes a suit for the ejectment of a trespasser he may claim, as alternative relief, that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court.

87. Section 207 of the original Bill provided that a landlord or a tenant might institute a suit for the determination of the nature and incidents of the tenancy. We have (Section 174) substituted the simpler and cheaper procedure of an application, and have empowered the Court, to which the application is made, to direct that a revenue officer shall make a local inquiry into any matter it thinks fit.

CHAPTER XVI.

Summary Sale for Arrears.

88. We have, in accordance with what we understand to be the desire of the landlords, maintained the provisions of the law relating to the sale of patní tenures, substantially intact, amending them only in matters of form and minor detail. The provisions so amended have now been transferred from the Schedules to the body of the Bill, and form the first division of this chapter.

89. The second division of it consists of a single section enacting that, if provision is made by law for the registration in a public register of any tenures other than patní tenures, the provisions of the chapter shall, subject to such modifications as the Local Government may by rule prescribe, apply to those tenures.

CHAPTER XVII.

Contract and Custom.

90. The important question as to the extent to which freedom of contract between landlord and tenant should be restricted has been disposed of, in so far as a few particular points are concerned, in the sections of the Bill relating to those points (*see e. g.* paras. 29, 30 and 48 *supra* on the subject of contracts fixing rent). But we have thought it convenient to collect in one section at the opening of this chapter most of the restrictions which, in the opinion of the majority of us, it is necessary to place on the power to contract out of the provisions of the law.

The matters which are thus placed beyond the reach of contract will be seen to be as follows :—

(*a.*) The acquisition of the status of settled-raiyat and of the occupancy-right (sections 24, 25, and 26).

(*b.*) The incidents of the occupancy-right specified in section 31.

(*c.*) The occupancy-raiyats right to demand a reduction of rent under section 51.

(*d.*) The right of either landlord or tenant to demand a commutation of a produce-rent under section 53.

(*e.*) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60, and 63).

(*f.*) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding (section 66).

(*g.*) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90, and 93).

(*h.*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

91. With a view to encouraging permanent mukarrarí leases we have inserted in this chapter a new section (211) providing that nothing in the Act shall be deemed to prevent a landlord in a permanently settled estate from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant.

92. It has been admitted throughout our discussions that lands held on reclamation-lease, chur or dearah lands, and lands taken under the customs known as *utbundi* and *hal-hasili* must be treated exceptionally, and the three following sections of this chapter are intended to make such special provision regarding them as appears to us to be necessary.

93. Section

93. Section 212 provides that nothing in the Act shall affect any contract for the reclamation of waste land.

94. Section 213 provides that raiyat holding chur or dearah land shall not acquire a right of occupancy in the land until he has held it for 12 continuous years, and that until he acquires a right of occupancy he shall be liable to pay whatever rent is agreed on between him and his landlord, but that the Court may upon the application of either party declare that the land has ceased to be chur or dearah land, and thereupon the provisions of the Act shall apply to it.

95. Lastly, section 214 enacts that nothing in the Act shall affect the conditions, customary or otherwise, under which land is held on either of the systems known as the *utbundi* and *hal-hasili* systems.

96. As already stated (paragraph 4) we have omitted Chapter VII. of the original Bill, which was intended to provide for the case of a raiyat holding his homestead otherwise than as a part of his holding as a raiyat. As, however, the absence of any mention of such tenancies in the Bill might give rise to misapprehension, we have thought it well to insert a section (216) expressly providing that their incidents will be regulated by local custom.

CHAPTER XVIII.

LIMITATION.

97. We consider that a moderately short period of limitation should be fixed for the recovery by an occupancy-raiyat of land comprised in his holding, and, following the precedent presented by Section 81 of the Central Provinces Tenancy Act, 1881, we have fixed the period at two years from the date on which he is ejected, adding a proviso to guard against the revival of causes of action already barred.

CHAPTER XIX.

SUPPLEMENTAL.

98. We have somewhat amplified the provisions of Section 221, which empowers a landlord to act through his agent, and in order to remove a misapprehension which notwithstanding the definition of "landlord" contained in the Bill, we have found to exist in some quarters, we have added a Section (222) to make it clear that when two or more persons are joint landlords, they must act together or through an agent appointed by them jointly.

99. In the course of our discussion various points have been raised with which we felt that we were unable to deal adequately without further information than that contained in the papers before us. On some of these points we should be glad to receive the advice both of the Local Government and of the High Court.

The principal questions are as follows:—

(1.) Whether, with reference especially to landlord's improvements, it is desirable to empower revenue officers to arrange for the cutting of irrigation channels, the distribution of water and the payment of compensation, and, if so, what form such provisions should take.

(2.) What modifications it may be desirable to make, whether by rules or otherwise, in the Code of Civil Procedure, with a view to expedite the trial of rent suits; and in particular whether it is desirable that landlords should be empowered to institute, by means of a single plaint, suits for arrears against a number of raiyats holding independently of each other.

(3.) Whether any provision can safely be enacted restricting the right to claim a re-trial when a decree has been given *ex parte*. We are aware that a judge is in no way bound to admit a re-trial unless he is satisfied that the summons failed to reach the defendant or that he was prevented by some sufficient cause from appearing; but the representations made to us are to the effect that the due service of the summons is systematically denied, and that the courts too readily accept the plea, thus encouraging tactics the only object of which is to interpose delay and to involve the landlord in unnecessary expense in recovering his dues.

The proposal before us was that *ex parte* suits should not be re-tried except upon the defendant depositing the amount decreed, but we were unwilling to adopt this proposal on the information before us and desired that it should be referred for the consideration of the Honourable Judges of the High Court.

(4.) A somewhat similar suggestion which has been made to us is that a defendent in a suit for arrears should not be allowed to appeal from a decree passed against him except on depositing the amount of the decree. On this suggestion, too, we should be glad to have the opinion of the judges.

(5.) A further point, and on this we desire to have the opinion of the Local Government, is whether the summary sale procedure can be applied to those independent taluqs, the revenue of which was settled direct with Government, though the holders pay it through the zamíndár. These tenures apparently find no place in the Government registers, and it was proposed that the modified *patní* procedure should be applied to them.

(6.) A similar proposal was made to render this procedure applicable to the recovery of arrears of Road Cess and Public Works Cess from rent-free tenure holders. We decided to refer this point also to the Local Government.

(7.) The necessity for further information respecting the conditions on which bastu or homestead land is held has already been noticed (*supra*, para. 4).

(8.) We are also anxious to be informed if the saving of customary conditions which we have specifically applied to *utbandi* and *hal-hasili* tenures should be extended to similar tenures under other names, and also if any special saving is necessary in regard to the special tenures under which land is held in the Chittagong division.

(9.) Again, we desire to be informed whether it would be possible to specify, for the purpose of exemption from the pre-emption sections, any such transferable occupancy-rights as those in guzashta and gora holdings.

(10.) Finally, we desire that the Government of Bengal may be consulted as to the possibility of improving the accuracy of the price lists which have been published during the past 12 years, and the probable effect of basing a system of enhancement of rent mainly on these prices.

100. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	Date.
Gazette of India - - - - -	- 3rd, 10th, and 17th March 1883.
Calcutta Gazette - - - - -	- 7th, 14th, and 21st March 1883.

IN THE VERNACULARS.

PROVINCE.	LANGUAGE.	Date.
Bengal	Bengalí	24th April 1883.
	Hindí	4th May 1883.
	Uriya	17th May 1883.

101. As we have already intimated, we are of opinion that the Bill as now amended should be republished.

(signed) *S. C. Bayley.*
Rivers Thompson.
C. P. Ilbert.
G. H. P. Evans.
J. W. Quinton.
*T. M. Gibbon.**
Amír Alí.
W. W. Hunter.
*H. Reynolds.**

I sign this report as a fair statement of the results of the deliberations of the Committee, but as I am opposed to the leading principles of the Bill and to many details, I record a separate dissent.

(signed) *Kristodás Pál.*

I am against the principles of the Bill *in toto.* I sign this report subject to the conditions mentioned by Honourable Rai Kristodás Pál, and only because I believe I am bound to sign it according to the rules.

14 March 1884. (signed) *Darbhangá.*

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* Subject to reservation on some points.

SCHEDULE.

Office Memorandum by Officiating Under Secretary to the Government of India, Revenue and Agricultural Department, No. 484–116 R., dated 1st May 1883, and enclosures [Papers No. 1].

From Under Secretary to Government, Bengal, No. 1827 648 L. R., dated 13th July 1883, and enclosures [Papers No. 2].

From Officiating Secretary to Government, Bengal, No. 1876–669 L. R., dated 18th July 1883, and enclosures [Papers No. 3].

From Officiating Secretary to Government, Bengal, No. 1928–694 L. R., dated 24th July 1883, and enclosures [Papers No. 4].

From Officiating Secretary to Government, Bengal, No. 2179–787 L. R., dated 13th August 1883, and enclosures [Papers No. 5].

From Under Secretary to Government, Bengal, No. 536 T. R., dated 24th August 1883, and enclosures [Papers No. 6].

From Under Secretary to Government, Bengal, No. 686 T. R., dated 3rd September 1883, and enclosures [Papers No. 7].

Notes by Hon'ble T. M. Gibbon [Papers No. 8].

Memorial of Landholders of Eastern Bengal, dated 14th September 1883, with notes [Paper No. 9].

From Rájá Promatha Natha Bahádúr of Dighapatia, No. 21, dated 20th September 1883 [Paper No 10].

From Under Secretary to Government, Bengal, No. 822 T. R., dated 15th September 1883, and enclosures [Papers No. 11].

From Officiating Secretary to Government, Bengal, No. 972 T. R., dated 27th September 1883, [Paper No. 12].

From Under Secretary to Government, Bengal, No. 1021 T. R., dated 1st October 1883, and enclosure [Papers No. 13].

From Under Secretary to Government, Bengal, No. 1083 T. R., dated 7th October 1883, and enclosures [Papers No. 14].

Office Memorandum by Officiating Under Secretary, to Government of India, Revenue and Agricultural Department, No. 964 R., dated 10th October 1883, and enclosures [Papers No. 15].

From Under Secretary to Government, Bengal, No. 1117 T. R., dated 10th October 1883, and enclosures [Papers No. 16].

From Under Secretary to Government, Bengal, No. 1160 T. R., dated 13th October 1883, and enclosures Papers No. 17],

From Bábú Kishori Láll Sarkár, Calcutta, dated 18th October 1883 [Paper No. 18].

From Under Secretary to Government, Bengal, No. 1299 T. R., dated 27th October 1883, and enclosures [Papers No. 19].

From Bábú Kishori Láll, Sarkár, Calcutta, dated 3rd November 1883 [Paper No. 20].

From Under Secretary to Government, Bengal, No. 2321–837 L. R., dated 10th November 1883, and enclosure [Papers No. 21].

From Under Secretary to Government, Bengal, No. 2389–861 L. R., dated 16th November 1883, and enclosure [Paper No. 22].

From Under Secretary to Government, Bengal, No. 2395–863 L. R., dated 17th November 1883, and enclosure [Papers No. 23].

Memorial from the Committee of the Orissa People's Association, dated 1st November 1883 [Paper No. 24].

From Bábú Ráj Kissor Mukárjí, Uttarpára, dated 10th November 1883, and enclosure [Papers No. 25].

From Honorary Secretary, Tirhút Landowners Association, No. 11, dated 13th November 1883, and enclosure [Papers No. 26].

From Bábú Kishori Láll Sarkár, dated 17th November 1883 [Paper No. 27].

From Secretary, Central Committee of Landowners of Bengal and Bihár, No. 118, dated 27th November 1883, and enclosures [Papers No. 28].

Endorsement by Officiating Under Secretary to Government of India, Revenue and Agricultural Department, No. 1064, dated 5th December 1883, and enclosures [Papers No. 29].

Memorial of certain Zamíndárs, Taluqdárs, and Intermediate Landholders of Sherpur, Maimansingh district, dated 16th November 1883 [Paper No. 30]

From Under Secretary to Government, Bengal, No. 2670–954, dated 12th December 1883, and enclosures [Papers No. 31].

From Secretary, British Indian Association, No. 123, dated 18th December 1883, and enclosure [Papers No. 32].

From Secretary Landholders Committee, Rájsháhi, dated December 1883, and enclosure [Papers No. 33].

Endorsement by Assistant Secretary to Government, Bengal, Legislative Department, No. 2, dated 5th January 1884, and enclosures [Papers No. 34].

From Under Secretary to Government, Bengal, No, 2789–1001 L. R., dated 19th December 1883, and enclosures [Papers No 35].

From Under Secretary to Government, Bengal, No. 182–45 L. R., dated 16th January 1884, and enclosure [Papers No. 36].

Resolutions passed at meeting of the Talanda Branch Indian Association, held on 16th January 1884 [Paper No. 37].

From Secretary, Bhágulpur Landholders Association, No. 106, dated 9th January 1884, and enclosures [Papers No. 38].

From Under Secretary to Government Bengal, No. 227–68 L. R., dated 21st January 1884, and enclosure [Papers No. 39].

From Officiating Secretary to Government, Bengal, No. 540–231 L. R., dated 9th February 1884, and enclosure [Papers No. 40].

From Honorary Secretary, Tirhút Landholders Association, No. 5, dated 9th February 1884, and enclosure [Papers No. 41].

DISSENT by the Honourable *Kristodás Pál*, Raí Bahádar, C.I.E.

I DISSENT from the Report of the majority of the Select Committee on the Bengal Tenancy Bill.

The Committee commenced their sittings from the 21st November 1883, and concluded their labours on the 13th March 1884. They first met twice a week, and the members were required to give 48 hours' notice of amendments to be moved by them. From the 26th January the Committee resolved to sit thrice a week from 2 p.m. to 5.30 p.m.; and notices of amendments were required to be sent in to the Secretary the day before the meeting; and the amendments were circulated on the morning of the meeting. The new arrangement was proposed owing to the amount of work which remained undone, and also owing to the near approach of the Simla season; but I cannot refrain from remarking that, apart from personal inconvenience which it necessarily involved, it left the members scant time, scarcely 10 hours, for the preparation of amendments. and six hours for their study, even if one gave his whole time to this work. I considered it my duty to protest against the arrangement, as it was neither fair to the individual members of the Committee, particularly to one in my position, being deprived of the opportunity of consulting those whose views I was understood to represent, nor to the momentous interests involved, but my protest was of no avail. The Committee certainly gave their best attention under the circumstances mentioned to the matters before them, and, as far as I was concerned, showed me the utmost courtesy and consideration, but there was an unavoidable haste in disposing of momentous questions at the last moment, which could not but be regretted.

I wish the rules of the Council had permitted the Committee to examine witnesses on practical questions connected with the Bill. The Committee, I doubt not, felt the necessity of this power. At the suggestion of His Honour the Lieutenant Governor the Committee in an informal way examined some experienced zamíndárs on the subject of sub-letting.

The Bill has undergone material alterations at the hands of the Committee, but its cardinal principles remain unchanged. In some respects the position of the zamíndárs has been made worse than what it was in the original Bill. On some minor points even-handed justice has been done to both the zamíndár and raiyat. The middle-man of course gains much more than what he has under the existing law, but the *boná fide* cultivator, in whose behalf the greatest anxiety was evinced in the Committee, will, I fear, be practically worse off than he is at present. I do not now wish to discuss the whole Bill, and will not therefore enter into details on these points.

My objections to the Bill have been principally based on these grounds: firstly, because it goes against the ancient and existing land-law of the country, taking away on the one hand and conferring on the other rights which are inconsistent with that law; secondly, because it assumes a construction of the regulations, which is opposed to judicial decisions, and takes for granted statements and facts not supported by evidence; thirdly, because it does not fulfil the primary object for which it was originally sought, namely, the simplification of the procedure for the settlement and realization of rent; fourthly, because it is calculated to sow dispute and dissension between the landlord and the tenant, and flood the land with litigation to the detriment of the peace and welfare of the agricultural community; fifthly, because it will tend to reduce a large proportion of cultivating raiyats into agricultural day labourers; and sixthly, because, by abolishing the freedom of contract between the landlord and the tenant, and by making the Court and the Revenue officer the referee and arbiter in all matters of zamíndárí management and raiyati action, it will neutralize the vital principle of self-reliance in the agricultural population and destroy its backbone, hamper the free operation of economic laws, and stereotype the patriarchal phase of Government with the aggravating evil of litigation at almost every step. These objections, which I took when the Bill was introduced last year, have not, I am sorry to say, been removed by the alterations made by the Select Committee.

In specifying my objections to the Bill, I do not propose to discuss it chapter by chapter, or to traverse all its details. I propose to confine myself to the leading principles of the Bill and a few principal details.

Tenure Holders.

In addition to the present class of persons who are recognised as tenure-holders, two other classes have been introduced, namely, (1) occupancy-raiyats who may sub-let more than half their holdings (section 37), and (2) raiyats, the area of whose holdings may exceed 100 standard bíghás, the whole or part of which is sub-let; in this case the tenant will be presumed to be a tenure-holder unless the contrary is shown (section 5, sub-section 5). In the case of the first-mentioned person, who is called a converted tenure-holder, all the incidents of the status of a tenure-holder will hold good except his liability to enhancement of rent. A tenant of the last-mentioned class will be entitled to all the rights and privileges of a tenure-holder. With regard to the first, I cannot understand with what justice is an occupancy raiyat exempted from his obligations under the Bill as to pre-emption and distraint, and the zamíndár in so far placed in a worse position, because the occupancy-raiyat chooses to sub-let more than half his holding. The conversion of an occupancy-raiyat of a holding, the area of which exceeds 100 bíghás, into a tenure-holder, is, in my opinion, still more arbitrary. The status of a tenure-holder carries certain privileges, which the occupancy-raiyat does not possess, and for which, generally, a valuable consideration is paid to the zamíndár. For instance, a tenure is not, unfrequently, a permanent holding, heritable and transferable according to conditions of contract, and, under the present Bill, will enjoy favoured rates of rent, and will be exempt from the rules of pre-emption and distraint. Surely, it cannot be contended that the conversion of the hundred-bighá jotedar into a tenure-holder under an edict of the Legislature is consistent with the ancient or existing land-law of the country. In so far, it is a direct encroachment upon the rights of the proprietary class.

Then as to enhancement of rent of tenure-holders, Section 8 of Regulation V. of 1812, contained the following rule as to the rate at which auction-purchasers might collect:—"In the case of a dependant taluqdár, if the rent of the lands be computed according to the rates payable by raiyats or cultivators for land of a similar quality and description, a deduction shall be allowed from the gross rent in the adjustment of the jama of such dependant taluq at the rate of 10 per cent., for the taluqdár's profit or income, over and above a reasonable allowance for charges of collection according to the extent of the taluq." This section was repealed by Act X. of 1859, which, however, contains no rule as to the grounds or limits of enhancement of the rent of tenure-holders and under-tenure-holders. But under case-law the rent may be enhanced up to the limit of the prevailing rate payable by the holders of similar tenures in the neighbourhood, or where no such prevailing rate is easily ascertainable, up to such a limit as shall not exceed 10 per centum of the collections after deducting the expenses of collection (*vide* "Field's Digest"). This case-law has been embodied in the present Bill, but with wide variations. For instance, "customary rate" has been substituted for "prevailing rate," though the former is less easily ascertainable than the latter. Under the case-law the margin left to the tenure-holder as profit was not to *exceed* 10 per cent. of the collections, but under the Bill it is to be *not less than* 10 per cent. of the balance which may remain after deducting, not from the collections, which I take to be actual collections, but from the gross rents, not only the expenses, but also "risks of collection." I may observe I am not aware of any revenue law under which an allowance is made for "risks of collection." Even the zamíndárs are not allowed any percentage for sums irrecoverable from raiyats on account of the public works and road cesses, though the liability is not their own, and though they collect the money for Government without any remuneration. It will be thus seen in what advantageous position is the tenure-holder placed under the present Bill compared with his position under the existing law. But this is not all. Under the existing law the rent of a tenure-holder is liable to be enhanced to any reasonable amount, but under the Bill the enhanced rent is not to be more than double the previous rent; under the existing law the enhanced rent is to be paid at once, but under the Bill the Court may direct that the enhancement shall

shall be gradual and payable in five years; under the existing law there is no limit of period as to enhancement of rent, but under the Bill the period is limited to 10 years. I allude to the last three provisions to show that while so little consideration has been shown to the zamíndár, who is the proprietor of the land, and who is responsible for Government revenue under the stern sun-set law, so much tenderness has been shown to the tenure-holder, who is generally looked upon as an idle factor. Surely this is not the way to discourage sub-letting.

Raiyats at fixed Rates.

For the first time a legal presumption was introduced by Act X. of 1859 to the effect that if the rent of a raiyat had not been changed for a period of 20 years before the commencement of a suit, it shall be presumed that the land has been held at that rent from the date of the permanent settlement. Whatever the necessity of such a provision at the time of passing Act X. of 1859, that necessity, it cannot be denied, no longer exists. The raiyats have advanced in intelligence and independence, and the practice of granting printed rent-receipts has become common in many parts of the country. They do not, therefore, now stand in need of the same measure of protection against enhancement which was considered necessary in 1859. On the contrary, the effect of this provision has been disastrous to the zamíndár. The Honourable Mr. Reynolds drew attention to this point in his Memorandum on the Bill of the Rent Commission. He quoted several opinions showing that the law has thrown "an unfair burden of proof upon the zamíndár," and that "it bears very hardly upon auction-purchasers who are often unable to get possession of the zamíndárí papers of their predecessors." This, Mr. Reynolds observes, is forcibly represented by the Collector of Purniyá, who believes that "there is hardly an estate in the whole of Bengal in which the value of the proprietary right has not suffered from this presumption." Without entirely abolishing the presumption, Mr. Reynolds recommended that its operation should be confined to cases in which uniform payment could be proved for 20 years before the period when the presumption was first introduced into the law. He proposed a further concession in favour of auction-purchasers by providing that the presumption shall not be pleaded against them. In making these recommendations Mr. Reynolds remarked, "In determining the principle upon which the Legislature should act it would seem that the main point to be considered is the practical effect of the presumption which was introduced into the Act of 1859." Has this presumption generally operated to defeat an unjust claim on the part of the landlord, or to maintain the tenant in a status to which he was not rightfully entitled? It is believed that to this question there can be only one answer. In the great majority of the cases in which the presumption has been successfully pleaded, it has had the effect of conferring upon tenants, whose holdings really originated subsequently to 1793, a privilege which was intended to be confined to those who had held from the date of the Permanent Settlement. If this is really the case, it does not seem inequitable that the rule should be modified in the manner which has now been suggested.

Mr. Reynolds, I am sorry to say, has since changed his opinion, but the validity and justice of his opinion remain all the same. Relying upon it, I moved the amendment of the law to the effect originally proposed by Mr. Reynolds, but neither my motion nor a very much modified proposal to allow the 20 years to count from before the date of the passing of the present Bill was accepted by the majority of the Committee. The Bill thus describes the incidents of holding at fixed rates:

Section 23.—A raiyat holding at a fixed rent or rate of rent—

(*a.*) Shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenure-holder, and

(*b.*) Shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of contract between him and his landlord, liable to be ejected.

Coupling this provision with the 20 years' presumption referred to, I cannot resist the conviction that it will tempt raiyats, whether entitled to the presumption or not, to declare themselves to be raiyats, at fixed rates, and thus

defraud the zamíndár of his just rights, who, if he be strong enough to assert them, must go through an expensive and harassing process of litigation to do so.

The intention of the Legislature in introducing this law of presumption was to protect raiyats holding from the date of the Permanent Settlement from arbitrary enhancement of rent by unscrupulous zamíndárs, but the continuance of this provision will, I fear, have the effect of converting by a side-wind every occupancy-raiyat into a *mukarraridár* or permanent tenure-holder. The consequence of this provision to good and bad zamíndárs is also striking. Where a zamíndár from a dislike of litigation, forbearance, or sympathy, has not enhanced the rent of a raiyat for more than 20 years, the raiyat, who has been careful enough to preserve his rent-receipts, will easily prove his case, while a zamíndár, who has shown no such consideration or leniency, who has not scrupled to trouble and harass the raiyat with periodic enhancement, will necessarily have a decided advantage. The result will be that the good zamíndár will suffer and the bad zamíndár will gain.

Occupancy-raiyats.

The occupancy-raiyat of the modern time is notoriously a creature of Act X. of 1859, but I do not wish to revive the controversy on the subject. The 12 years' rule has been in existence for more than a quarter of a century, and it cannot be fair or just to disturb it now. The only fault found with the present law on the subject is that if a zamíndár were so disposed he could defeat the growth of the occupancy-right by shifting the raiyat from field to field. This practice, it is admitted, is not known in Bengal. But the Secretary of State, whilst strongly expressing himself in favour of the present 12 years' rule of continuous possession, has recommended the following modification. He would provide that "every resident raiyat shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident-raiyat shall be one who, or whose ancestor, has occupied any land in the village or estate for 12 years." I do not at all subscribe to the equitableness of this provision. I do not think that it is fair or just that a squatter, because allowed to hold land in one part of an estate for 12 years, should, *ipso facto*, be entitled to hold land in all other parts of the estate as an occupancy or privileged raiyat. If in any part of the country the zamíndár has sought to nullify the growth of occupancy-right by shifting the raiyat from one plot of land to another, he has, it cannot be denied, acted within the law, and it would be as unreasonable to suppose that he has acted wrongly as to suppose that a tradesman is wrong in suing his debtor before the time, which would, under the law of limitation, bar his claim. As for preventing shifting, if it should be deemed absolutely necessary, I would have preferred to punish such an act by imposing a heavy penalty. But the Committee ruled, that the Right Honourable the Secretary of State for India having finally decided the question, they were not competent to re-open it, but I cannot help remarking that the Committee have gone further than the area covered by the Secretary of State's decision. The original Bill contained the following provisions regarding the acquisition of the status of a settled raiyat:—

Section 45.—Every person, who for a period of 12 years, whether before or after the commencement of this Act, has continuously held, as a raiyat, raiyatí land situate in any village or estate, shall, notwithstanding any contract to the contrary, and though the land so held by him at different times during that period may have been different, be deemed to become, on the expiration of that period, a settled raiyat of that village or estate.

Again:

Section 47.—Every settled raiyat of a village or estate holding after the second day of March 1883, as a raiyat, any raiyatí land comprised in that village or estate shall, notwithstanding any contract to the contrary, be deemed to acquire or have acquired in that land a right of occupancy under the law for the time being in force.

At the instance of the Bengal Government the Committee have greatly extended

extended the theory of the settled raiyat and created a new legal presumption in his favour. Thus:

Section 25.—(1.) Every settled raiyat of a village or estate shall have a right of occupancy in all land held by him as a raiyat in that village or estate.

(2.) Every person who, being a settled raiyat of a village or estate, held land as a raiyat in that village or estate at any time between the 2nd day of March 1883 and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force.

Section 26.—(1.) Every person who, for a period of 12 years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate.

(2.) If, in any proceedings under this Act, it is proved or admitted that a person holds land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for 12 years held the land or some part of it as a raiyat.

(3.) A person shall be deemed, for the purposes of this section, to have held land continuously in a village or estate, notwithstanding that the particular land held by him has been different at different times.

(4.) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(5.) Land held by two or more co-sharers as a raiyatí holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(6.) A person shall continue to be a settled raiyat of a village or estate, as long as he holds any land as a raiyat in that village or estate and for one year thereafter.

(7.) If a raiyat recovers possession of land under Section 96, he shall be deemed to have continued to be a settled raiyat, notwithstanding his having been out of possession for more than a year.

These provisions, I submit, are wholly outside the decision of the Secretary of State. That authority would in no case reduce the period of occupation from 12 years as provided in section 25, sub-section (2), nor did he recommend any legal presumption that every raiyat shall be considered a settled raiyat with right of occupancy unless proved to the contrary. The Secretary of State, it would be observed, would recognise a "resident raiyat" as an occupancy-raiyat, but the provisions quoted above do not recognise *residence* as a condition of accruel of occupancy-right. In the second place, the Secretary of State does not refer to possession by two or more co-sharers as a proof of occupancy-right derived by each such co-sharer. In the third place, he does not say that, even if a settled raiyat leaves his holding and pays no rent, he shall be considered a settled raiyat "for one year thereafter." On the contrary, he declares payment of rent as an inalienable condition of the right. And lastly, the Secretary of State nowhere says that if a raiyat once abandons a holding and afterwards recovers possession by payment of compensation, he shall be deemed to have continued to be a settled raiyat, notwithstanding his being out of possession for more than a year. All these proposals, I repeat, are outside the sanction of the Secretary of State, and, as a matter of course, are so many encroachments upon the proprietary rights of the zamíndár.

It is observable that while a person holding land as a raiyat shall not be prevented from acquiring an occupancy-right in the land by reason that he is jointly interested in the land as proprietor or tenure-holder, and a person, though an *ijárdár* or farmer, shall not lose his right of occupancy in any land which he may subsequently hold in farm, it is declared that if the landlord acquires an occupancy holding, the occupancy-right shall cease to exist (section 28). On what principle is this right denied to the landlord and conceded to the tenure-holder, who may be a permanent holder, and to the farmer, is not clear to me. It does seem strange and incomprehensible that the zamíndár alone shall not be allowed to enjoy the ordinary rights of a purchaser, simply because he happens to be a zamíndár.

On this point I venture to draw attention to the following remarks of Mr. H. L. Dampier, Senior Member of the Board of Revenue, deservedly regarded as a high fiscal authority in Bengal. He says: "It will be open to the whole world, with one exception only, to acquire by purchase or otherwise, and to

continue to hold certain rights described as occupancy-rights in a given piece of land. Such rights may be acquired and held by distant non-agricultural capitalists; by the zamíndárs of estates adjoining that within which the land lies; by the zamíndárs, resident or absentee, of the estate itself, if the land is included in a tenure; by any non-resident holders of tenures, whether in the estate itself or in any other estate; by the very holders of tenures above the lowest under-tenure which includes the land. The one person who is debarred from holding this right, even if he acquires it by purchase from the person in whom it last vested, is 'the landlord,' that is, by the definition the 'person or number of persons immediately under whom a tenant holds;' or, according to the proposal made by the Lieutenant Governor towards the end of paragraph 14, the 'proprietor or permanent tenure-holder immediately under whom the raiyat holds.'" The justice of these remarks is so evident that I need say nothing by way of comment.

Transfer of Occupancy-holding and Pre-emption.

The question of transferability of the occupancy-holding has been discussed threadbare. I will not therefore repeat the arguments against it, which are already so well known. Suffice it to say, that the measure will be equally injurious both to the zamíndárs and the raiyats; the former will have a valuable right unjustly taken away from them, and be exposed to the intrusion of hostile persons into their estates, and the latter, under their peculiar circumstances, will, at no distant time, be reduced to the status of day-labourers by being sold out of their holdings, on which they depend for their subsistence. Neither under the Permanent Settlement Regulations, nor under Act X. of 1859, is an occupancy-holding transferable. When the question of the transferability of the occupancy-holding was first proposed by the Government of Bengal, the Government of India expressed its disapproval of it. The British Indian Association was invited to express its opinion on the subject, and it agreed to the legalization of the sale of the occupancy-holding in satisfaction of decree for rent, and suggested that, where a zamíndár might adopt this remedy, an occupancy-holding once so sold should be declared to have become a transferable tenure. The Lieutenant Governor of the day practically adopted the suggestion. In a letter to the Government of India, dated the 2nd February 1878, Mr. Secretary Reynolds wrote:

"The Lieutenant Governor has with some reluctance withdrawn the proposal that the occupancy-right shall be generally transferable by private sale or other agreement. The weight of opinion is in favour of this proposal, as will be seen by a reference to the letter of the Board of Revenue, and his Honour is satisfied that such transfers would not have the bad effect which has been sometimes apprehended, and that they would not tend to transfer the land to classes whose ownership it might not be thought desirable to encourage. He believes that such a right of transfer would be much to the benefit of landholder and raiyat. It appears, however, that the landlord class are strongly opposed to the concession of any general right of transfer, and the Governor General in Council has expressed serious doubts as to the expediency of including such a provision in the Bill. The Bill, therefore, only proposes to recognise sales of occupancy-tenures at the request of the landlord in execution of decrees of Court, and to this the Lieutenant Governor believes that no objection will be made."

The Bengal Government has since changed its opinion on the subject, and the concession made by the zamíndárs in 1878 necessarily goes for nothing. In the present Bill the transferability of the occupancy-holding is made general and absolute, subject to a rule of pre-emption. There is nothing in the Bill to prevent greedy land-jobbers or speculators from trafficking in land at the expense of the zamíndárs. As to right of pre-emption accorded to the zamíndár it will, I am afraid, prove in practice more a shadow than a substance. In the first place, the zamíndár will have to pay a consideration for land of which he is the proprietor, and which was never before transferable under the law. He will then have to run a competition with other bidders for the purchase of the land, and if he cannot come to an agreement with the raiyat about the price, he must

must go through the expensive process of a reference to the Court for arbitrament, and must be prepared to pay the price adjudged by the Court. If the raiyats of a zamíndár in any considerable number become recusant and threaten him with the sale of their holdings, it will be difficult for him to keep out hostile people from the holdings unless he has a long purse to buy them up. Practically, therefore, this recognition of the transferability of the occupancy-holding may be worked by evil-disposed raiyats to the utter ruin of the zamíndár. It is noteworthy that while the zamíndár will have to go through the expensive process of obtaining the Court's decision as to price, the raiyat shall not be bound by that decision, for Section 32, Sub-section 4, says that when the zamíndár tenders a price to the raiyat, "the raiyat shall either abstain from selling the land or sell it to the landlord at that price." So the landlord will be entirely at the mercy of the raiyat.

Shadowy as the right of pre-emption will practically be, the amended Bill contrives to keep out of the purview of this provision all substantial raiyats, for under it the rule of pre-emption will not apply to tenure-holders, and all occupancy raiyats who may sub-let more than half their holdings, or who may keep holdings of more than 100 bíghás in size, part of which is sub-let, are, *ipso facto*, converted into tenure-holders.

Enhancement of Rent.

I have already alluded to the question of the enhancement of the rent of tenure-holders, who are placed at a considerable advantage to the detriment of the zamíndár, a position which they had never before enjoyed under the Permanent Settlement Regulations or under Act X. of 1859. With regard to the enhancement of the rent of occupancy-raiyats, I wish to point out that at present the enhancement law has come to a dead-lock, and that one of the chief objects of fresh legislation is admitted to be to afford relief to the zamíndárs in this matter; but I am of opinion that the alterations made by the Committee will tend more to maintain the *status quo* than to secure justice to the landlord. In the first place, under the existing law, there is a perfect freedom of contract between the landlord and the tenant regarding enhancement of rent outside the Court, but under the Bill this freedom is entirely taken away, and it is provided that where the arrangement may be voluntary, the enhancement shall not exceed more than four annas in the rupee, that is to say, not more than two annas for a term of at least seven years, and if more than two annas, but not more than four annas in the rupee, for a term of at least 15 years. Thus a serious disability is imposed upon the landlord in fixing rent outside the Court. When enhancement of rent is sought by suit, the grounds on which the enhancement may be applied for are thus set forth:

(*a.*) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description, and with similar advantages in the vicinity.

(*b.*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c.*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d.*) That the productive powers of the land held by the raiyat have been increased by fluvial action.

I am not prepared to say that the revised grounds will materially help the solution of the problem of enhancement. The first ground, "prevailing rate," is not made clear, and the same doubts and uncertainties that now hang round it remain unremoved. An attempt was made to explain it, but it was opposed by the Bengal Government. The second ground will, I am afraid, prove fictitious, for knowing, as the Committee do, how unreliable are the price lists prepared by Government officers, they cannot deny that it will be difficult to obtain reliable data for striking average prices, particularly "in the locality or at the usual markets," who is to fix the usual markets? The third ground will be made

practically inoperative by the conditions which follow. As for the fourth ground, even if it be fairly worked, its application will be exceptional.

The rules providing for enhancement inquiries by the revenue officer will practically leave the whole matter to the discretion of the revenue officer. For instance, in ascertaining the prevailing rate, the revenue officer is directed to make a local inquiry, but he is not told on what principle he is to find the prevailing rate, and the result will be diversity of practice under diverse officers. In working out enhancement on the ground of rise in prices it is provided that—

> (*a.*) The Court shall have regard to the lists of prices periodically published under the authority of the Local Government, and shall compare the average prices during the quinquennial period immediately preceding the institution of the suit with the average prices during such other quinquennial period as it may appear equitable and practicable to take for comparison.
>
> (*b.*) The Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.
>
> (*c.*) Subject as aforesaid, and subject also to Section 48, the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last quinquennial period bear to the average prices during the previous quinquennial period taken for purposes of comparison.

In carrying out the above provisions much will depend upon the price lists, and, as I have already stated, those that are published in the "Calcutta Gazette" by Government are wholly unreliable. They are collected by the police, who cannot be expected to be over-scrutinous. They are not tested by any responsible agency, not to say that the wholesale and retail prices being generally mixed up, no fair average can be based upon them. Unless special care be taken to prepare the lists, and this remark applies to future lists, they cannot and ought not to be accepted by courts of justice as good and valid evidence. The question still recurs, how will the lists of past prices be prepared?

It will be observed that the value of all crops must be reduced to the price of paddy in Bengal, and that of Indian corn, barley, and wheat in Bihár. The specification of the staple food-crops is left to the discretion of the Local Government, which may from time to time vary them. No allowance is made for valuable crops, such as tobacco, sugar-cane, mulberry, potato, jute, &c. This rule is evidently founded on the principle of the Tithes Commutation Act of the United Kingdom. There is, however, I venture to submit, no fair analogy between tithes in England and rents in Bengal, for the former represented a fixed share or a tenth part of the crop, while the latter, though originally based on a share of the produce, have now greatly receded from the old standard. An English tithe is not susceptible of enhancement, whereas the Bengal money rent is legally declared to be liable to enhancement. The question, therefore, arises whether the principle, which is held equitable in the commutation of tithes, would be fair and equitable in the enhancement of a money rent? As far as I can judge, the difficulties in carrying out the principle will by no means be less than what they are under the existing law. As for enhancement on the ground of landlord's improvement, it is so much handicapped by restrictive conditions that it will, I fear, prove an economic anomaly. After enumerating the circumstances which the Court should take into consideration in ordering enhancement on this ground, Section 46 says that the Court shall consider the ability of the land to bear a higher rent. With such an uncertainty hanging over him, will any proprietor, with two grains of common sense to rub against one another, undertake any improvement? If he cannot be sure of any return for his money, naturally, he won't lay out money. There are two other points connected with this subject. It was settled in previous correspondence between the Government of Bengal and the British Indian Association that enhancement of rent in any case should not be more than double the present rent, and that every enhancement of rent shall have a currency of 10 years. These rules were embodied in the original draft Bill, but, at the instance of the present Bengal Government, both the rules have been altered. It is now declared that, when enhancement is sought on the ground of prevailing rate, the

the rent shall not exceed the previous rent by more than eight annas in the rupee, or 50 per cent., and that, when it is sought on the ground of rise in prices, the enhanced rent shall not exceed the previous rent by more than four annas in the rupee, or 25 per cent., and that every enhancement shall have a currency of 15 years. It would be thus seen that there is no finality in the decision of Government, and that the more is conceded by the zamíndárs the more is demanded from them.

It is observable that where the enhancement is sought on the ground of the present rent being below the "prevailing rate," common sense suggests that the rent should be raised to the limit of the "prevailing rate,"—it is not clear why a maximum limit of 50 per cent. should be fixed in such a case. Again, where the enhancement is sought on the ground of rise in prices, and the increase is to be given according to the rule of proportion, it is not equitable that there should be again a maximum limit of 25 per cent.

Commutation of Produce-Rents into Money Payments.

This part of the Bill affects Bihár more than Bengal, and as my honourable colleague, his Highness the Mahárájá of Darbhangá, will doubtless comment upon it, I need not say much upon it. I may, however, observe that the principle upon which the commutation is directed to be made, namely, (*a.*) the average money rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity, and (*b.*) the average value of the rent actually received by the landlord during the preceding 10 years, will tend to lower the present rents. I should add, that when the Bill was introduced, a distinct assurance was given that the present rents will not be lowered.

Non-Occupancy Raiyats.

Both under the Permanent Settlement Regulations, and Act X. of 1859, it was left entirely to the discretion of the landlord to deal with the non-occupancy-raiyat, who is none other than the tenant-at-will. But the relations between the landlord and non-occupancy-raiyat are materially altered by this Bill. Nothing will prevent the non-occupancy-raiyat from acquiring the occupancy-right, and as already observed, he will get the benefit of the legal presumption of a settled raiyat if he can manage to scatter a few seeds once upon a plot of ground; then when he will be first let in, he will be liable to pay such rent as may be agreed on between himself and his landlord, but no enhancement will be allowed, except by registered agreement, and even when an agreement may be tendered by the landlord to the raiyat, the latter may refuse it, and the former will then be driven to the necessity of instituting a suit to eject him. The Court shall then determine what rent is fair and equitable for the holding, and if the raiyat agrees to pay the rent so determined, the landlord, under order of Court, shall be bound to give him a lease for five years, and if before the termination of the lease the raiyat shall have acquired a right of occupancy, he will be entitled to all the rights and privileges of an occupancy-raiyat. The non-occupancy-raiyat will thus be one in name; the landlord's present right to deal with him at his discretion is entirely taken away, while the freedom of contract is disallowed and the landlord is compelled to give a judicial lease for five years. I should observe, that in consequence of the introduction of the judicial lease, the original provisions regarding compensation for disturbance have been omitted. These provisions embodied a new-fangled idea not known in this country, and would, if retained, have proved a new apple of discord. But the substitution of the judicial lease for five years involves a great injustice to the landlord, who is tied hand and foot by the Court in a matter in which he has always enjoyed perfect independence of action. The raiyat, in whose favour the judicial lease is ordered, may be most obstreperous and turbulent, may by his bad advice be tainting the whole flock around him, and may thus prove most mischievous, not to say that the landlord, if he settles the land with another raiyat, may get better rent, and perhaps better security for payment of rent. But the judicial lease will give him no such option or advantage. I cannot help thinking that the provisions relating to non-occupancy-raiyats involved a further

invasion of the proprietary rights of the landlord, and that in favour of a class of tenants who are not attached to the soil, and have therefore no manner of moral claim upon the consideration of the landlord.

Sub-Letting and Sub-Raiyats.

One principal defect of the Bill as introduced was that while it seriously curtailed the rights and privileges of the zamíndár, it did practically little for the good of the *boná fide* cultivator, whose labour constituted the wealth of the country and fed a whole host of proprietors and sub-proprietors, including the Government, as the representative of the public. The position of the middleman had been greatly strengthened, while the sub-raiyats, usually the actual cultivators of the soil, were left to the tender mercies of the middlemen. The invidiousness of this condition was fully realized by the Committee, and they proposed various devices for bettering the position of the sub-raiyats. Accordingly, restrictions have been proposed in the Bill on sub-letting, but I doubt whether these provisions will work. In the first place, if an occupancy-raiyat sub-lets more than half his holding, he shall on registration of the same be converted into a tenure-holder. Considering the decidedly advantageous position of the tenure-holder, this will operate as a premium on sub-letting instead of as a repressive measure. In the second place, if an occupancy-raiyat sub-lets, his sub-lease shall not be valid for a term exceeding seven years, and this provision will have a retrospective effect. Surely this will be no loss to the sub-lessor, for the shorter the lease the greater his gain. In the third place, the landlord of a sub-raiyat shall not, in the case of a registered lease, be entitled to recover rent more than 50 per cent. of what he himself pays, and in any other case not more than 25 per cent. I do not understand how this rule will work, where there is a long chain of middlemen, for instance in Backergunge, where there are 13 grades of middlemen. Will each middleman have the right to claim from his sub-raiyat 50 per cent. in excess of what he pays to his own landlord? What would then be the position of the last link in the chain —of the men who immediately cultivate? And in the fourth place, a sub-raiyat shall not be liable to be ejected by the landlord except at the end of an agricultural year and after a written notice to quit, to be served not less than six months before the expiration of that year. My own impression is that there will be frequent disputes between the superior raiyat and the sub-raiyat as to whether the former has sub-let more than half his holding, and the result will be either silent suffering on the part of the sub-raiyat or frequent litigation. Then, as far as I can judge, the limitation of rent under section 62 will apply only in such cases in which a superior raiyat may sub-let more than half his holding; he will, therefore, studiously keep himself under this limit, and thus avoid the clutches of the law. Furthermore, it will be nobody's interest to bring to court the superior raiyat contravening the law, for no penalty attaches to breach of law. The superior raiyat will make it a point not to let his land to any raiyat who will not accept his own terms, and when a sub-raiyat accepts those terms he will not seek the benefit of the law; another raiyat, a third party, may wish to get the land on the terms prescribed by law, but he will have no *locus standi*, if he be not admitted by the superior raiyat. So that the new provisions restricting sub-letting will either prove a dead letter or give rise to endless litigation.

Improvements.

The chapter on improvements introduces an alteration in the relations between the landlord and tenant consistent with neither the existing law nor custom. At present improvements are generally made by the landlords, and where they are made by tenants they are effected with the consent and sanction of the landlord, but this chapter declares that (1) where a raiyat holds at a fixed rent his landlord shall not be entitled to prevent him from making any improvement in respect of his holding; (2) where a raiyat has an occupancy-right, he shall have the prior right to make the improvement, unless it affects another holding, or other holdings, under the same landlord, and (3) where a non-occupancy raiyat desires that a certain improvement should be made in his holding, he shall serve a notice on the landlord calling upon him to make the improvement

improvement within a reasonable time, and if the landlord is unable or neglects to comply with his request, he may make the improvement himself. The whole theory of these provisions ignore the proprietary right of the landlord, and assigns to the Collector the task of deciding as to who has the right to make improvements. If public policy requires that the raiyat should be encouraged to make improvements, surely the first option ought to be given to the landlord to effect them. From an economic point of view the landlord, having larger capital, is in a better position to carry out improvements, but no facilities are offered to him for this purpose. Even a return in the shape of increased rent is not assured to him for his outlay of capital on improvements, for it will be in the discretion of the court not to allow an enhancement if the court thinks that the land cannot bear enhanced rent. The inevitable result of these rules, I am afraid, will be to throw back all improvements. The soundness of the policy, which expects improvements from those who have not the means to make them, and to deter those who can, is unintelligible to me. I suggested that facilities should be given to the landlord to acquire land for purposes of agricultural experiments, model-farms, &c., but my proposals were not accepted. I was referred to an amendment of the Land Acquisition Act.

Management of Joint Estates.

The Bill gives power to the District Judge, on the application of the Collector or of any person interested, even a squatter, to deprive co-owners of an estate or tenure of the right of management thereof, if it appears to him that there has ensued or is likely to ensue (*a*) inconvenience to the public, or (*b*) injury to private rights. I shall take the last point first. I at once admit that hardships and harassment may be caused to raiyats in consequence of disputes among co-owners and the absence of a common manager, but this point has been met by the Committee in the provisions made for deposit of rent. Section 73, clause (*c*), says that a tenant may deposit rent when the rent is payable to sharers jointly, and the tenant is unable to obtain the joint receipt of these co-sharers for the money, when no person has been empowered to receive rent in their behalf. Besides, the co-sharers cannot apply for distraint or sue for enhanced rent unless they make the application or institute the suit jointly or through a common manager. It will be thus seen that the Bill effectually removes all reasonable complaints of raiyats who are tenants of joint estates. As for inconvenience to the public from the joint management of estates, I confess I do not clearly understand it. If, for instance, the co-parceners default in the payment of revenue, their estates are liable to sale; if they transgress law or fail to comply with public requisitions, their responsibility is easily traceable under the operation of the Bengal Registration Act, and they are liable to punishment. It is not therefore clear why they should be deprived of the management of their own property because the Collector or Judge thinks that it causes "inconvenience to the public." I submit it would be contrary to sound public policy to remove all incentives to exertion and improvement from landed proprietors and capitalists by delegating the management of their property to others on pleas which have no existence in fact.

Record of Rights, Settlement of Rents, Tables of Rates, and Record of Proprietor's Private Lands.

The chapters relating to these subjects are doubtless in accordance with the modern ideas of land administration in periodically settled India, but as far as Bengal is concerned, the rights and interests of different parties are generally well-defined, and where there might be disputes between landlords and tenants in matters dealt with in these chapters, common sense would suggest that the application of the law should be left to the self-interest of the parties concerned. But the essence of these chapters is that while liberty is accorded to both landlord and tenant to move the machinery provided in them, the Local Government is empowered to bring of its own motion the machinery into action. The application of the provisions contained in these chapters will, I fear, plunge the country into a flood of litigation, stir up the worst passions of both the landlord and the tenant, open a wide door to perjury and forgery, give rise to endless corruption among the subordinate *amlah*, and throw the

agricultural population into a sea of trouble, expense and loss. This was the lesson taught by the Revenue Survey. Of course, when the parties will themselves apply for the enforcement of the provisions under notice, it will be their own look-out, but I do not see any good or valid reason why the Government should, without any application from the parties, step in and inflict upon the country the evils pointed out above. The work contemplated cannot, I fear, be accomplished in two or three generations to come, and for all this time will run the festering sore indicated above. If the record-of-rights were confined to those cases in which auction-purchasers at revenue or summary sales may not receive *jamabandi* papers for their guidance, if the settlement of rents were made applicable to those cases in which the raiyats might combine and withhold payment of rent and agrarian outrages might take place, and if the record of proprietor's private lands were limited to those cases in which the proprietor himself made the application, in all these cases, on the application of parties, it would be reasonable and fair; but to give the wide scope which has been given in these chapters by vesting the Government with unlimited discretion is not only not warranted by the necessities of the case, but will be followed by evils which will be highly detrimental to the best interests, peace and happiness of the agricultural population. As regards tables of rates, the inquiries which have been made on the subject have made it clear that in most parts of the country they are not practicable, that there are so many variations in rates of rent, sometimes 100 and odd in a village, owing to various causes, historical, personal, economical and social, that it is hopeless to discover any typical or uniform rate, or what was formerly called *Pargana* rate in any given area. And yet power is taken by the Local Government to order preparation of tables of rates for special areas and to charge landlords and tenants with the cost of this work, though they may not in the least benefit by it. In the same way the expenses which may be incurred by enforcing the provisions relating to record-of-rights and settlement of rents, will be cast upon the landlords and tenants, though no application had been made by them. Thus a new cess will be imposed upon the land for purposes of proceedings which may do more harm than good to the landed classes.

As regards the record of proprietor's private lands which go by the name of *khámár*, the definition given is wholly opposed to what is contained in the Permanent Settlement Regulations and excludes all waste lands. Section 138 declares:

Section 138.—(1.) The revenue officer shall record as a proprietor's private land—

(*a.*) Land which is proved to have been cultivated as khámár, zírat, sír, nij, nij-jot, or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for 12 continuous years immediately before the passing of this Act, and,

(*b.*) Cultivated land which is recognised by village custom as proprietor's khámár, zírat, sír, nij, nij-jot, or kamat.

(2.) In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the 2nd day of March 1883, specifically let as proprietor's private land; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3.) If any question arises in a civil court as to whether land is or is not a proprietor's private land, the court shall have regard to the rules laid down in this section for the guidance of revenue officers.

Section 37 of Regulation VIII. of 1793, thus describes *khámár* lands:—

Section 37, Regulation VIII., of 1793. The above exception [exclusion of lakhiraj lands from the general assessment], however, is not meant to include the *Malikanah* lands in Bíhár, or the *nankar, khámâr, nij-jot,* and other private lands of the zamíndárs and independent talukdárs, or other actual proprietors of land in Bengal and Mednípur, &c.

It will be seen by comparing the language of the Regulation with that of the Bill that no such condition as cultivation for 12 continuous years was attached to the zamíndár's *khámár* lands under the old law. As for waste lands, it is notorious that they were given to the zamíndár to enable him to recoup the loss which inevitably fell upon him under the crushing assessment of the Permanent Settlement.

Distraint.

The law of distraint is generally regarded as an important and potential auxiliary in realising rent. In Bihár, I understand, it is largely resorted to. The essence of the present law of distraint is, that the process is a sharp and quick remedy, and that the whole responsiblility rests upon the landlord, who is liable to heavy penalties in case of abuse of power. Under the Bill distraint is made a process of court; it is clogged with various restrictions, and by the time the order may be executed the crops may be off the field. The procedure is so much elaborated that it will no longer prove the prompt remedy, which the distraint law ought to be, while the expense and harassment will be such as to compel the landlord to forego it altogether. I am inclined to think that the law of distraint, as provided in the Bill, will remain a dead-letter, and thus the only facility which the landlord possesses at present for realising his rent quickly will be taken away from him.

Judicial Procedure.

I need not repeat that the Government has over and over promised to simplify the procedure for recovery of rent. It has recognised its obligation in this respect from the time of the Permanent Settlement to this day. One of the primary objects of the present Bill from its first inception has avowedly been the simplification of the procedure for the realisation of rent, and the Committee in deliberating upon the subject fully admitted it, but the practical result of their deliberations, I am constrained to say, is disappointing. I submitted three schemes on the subject: (1) the Patní Procedure, (2) the Certificate Procedure now applicable to Government and Wards Estates, and (3) a modification of the present procedure. I set out below the details of the third scheme.

The zamíndár or rent-receiver in instituting a suit for arrear of rent should make out a *primá facie* case by filing necessary papers, such as *jama-wásil-bákí* papers and counterfoils of receipts and giving necessary evidence.

The court should then issue summons. In order to obviate the usual complaint of non-service of summons, I would suggest a provision to the following effect:—

"The summons shall be ordinarily served personally or by a registered postal cover. If for any reason the summons cannot be served personally on the defendant, it shall be affixed at his usual place of residence in the village in which the land is situate, or within five miles thereof. The notice may be served by affixing it at the mál-kacharí of such land, or on the land for which the arrear is due or other conspicuous place thereon, or at the village chauki or chowpal, or at some other conspicuous place in the village in which the land is situate. An attestation of service should be taken from the village chaukídár, village mandal, or some two respectable residents of the village, or rural sub-registrar, as the case may be."

The order to prevent abuse, at least two of the above-mentioned processes should be observed in every case; and with this safeguard the plea of non-service of summons should not be accepted by the Court as a good ground for re-opening or re-trying a case which has been decided *ex parte*.

The summons should contain a notice that unless the defendant appears within one week from date of service, the Court shall pass a decree for the amount claimed, and order immediate execution. The Court should be required to examine the defendant within eight days from the date he enters appearance and give notice of the day appointed to the plaintiff. The defendant should be required to file all documentary proofs, and bring his witnesses in support of his pleas on the day of his examination. If the nature of the case admits of the immediate disposal of the suit, the Court should do so; or, if the case be contested, it should on that day settle the issues in the presence of both parties, and fix another day for hearing and final determination of the suit, not exceeding a fortnight from the date of examination of the defendant.

As regards execution, if the defaulter be a tenure-holder or occupancy-raiyat, his tenure or holding should be sold in execution. If he be a non-occupancy-raiyat, he should be evicted.

No appeal should be admitted unless the amount decreed was deposited.

The rent-receiver should be allowed to take out the deposit on giving proper security.

This scheme seemed to enlist the sympathy of many of my honourable colleagues in the Committee, but, to my misfortune, the majority have not been able to accept it. They say—

> For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons, and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

The Committee have, however, introduced the following new provisions :—

> We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an important amendment in the Section (164) which requires a tenant admitting that rent is due from him, but pleading that it it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent-suit, and we have therefore provided that the Court shall, on the money being paid in, caused notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff, and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

A much more efficacious remedy, in my humble opinion, would have been, as I pointed out in Committee, to declare forfeiture of right of the raiyat in case his disclaimer of the title of his landlord was disproved in Court. The modifications proposed by the Committee would only multiply wheel within wheel, a title-suit in an arrear-suit, and thus vastly delay the realisation of rent instead of facilitating it.

The Committee propose to give power to the High Court to make modifications in the ordinary procedure, if necessary, in applying it to the trial of rent-suits. This, to my mind, is tantamount to shirking the question. Surely the Legislature, which has enacted the code of procedure, is competent to modify it for the purpose of expediting the trial of rent-suits.

I do hope that when the Committee meet in November next they will be able to see their way to an efficacious simplification of the present procedure for the realisation of rent, which is a crying grievance with the landlords, and in consequence of which they are not unfrequently heavy losers in meeting the Government demand of the revenue and the cesses. If there is a consensus of opinion on any one point connected with the rent-law, it is on this, and it would be a scandal if, while the whole law is being overhauled, no substantial aid be given to the landlords to realise their just dues.

Freedom of Contract.

Under this Bill freedom of contract between the landlord and the tenant is practically abolished. The matters which are placed beyond the reach of contract are thus specified by the Committee :—

(*a.*) The acquisition of the status of settled raiyat and of the occupancy-right (sections 24, 25, and 26).

(*b.*) The incidents of the occupancy-right specified in section 31.

(*c.*) The occupancy-raiyat's right to demand a reduction of rent under section 51.

(*d.*) The right of either landlord or tenant to demand a commutation of a produce-rent under section 53.

(*e.*) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60, and 63).

(*f.*) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding (section 66).

(*g.*) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90, and 93).

(*h.*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

I have,

I have, in my remarks on the introduction of the Bill, strongly protested against this retrograde move. The Permanent Settlement Regulations not only recognised but openly encouraged freedom of contract, and Act X. of 1859 did the same. I cannot conceive that if the raiyat can be fairly considered a free agent in mortgaging or selling his hearth and home or his agricultural land, in disposing of the produce of his field, or engaging his labour and fulfilling a thousand other obligations of every-day life, why he should be considered incompetent to enter into contract with his landlord. I would strongly urge the re-consideration of this question.

Civil Courts and Revenue Officers.

The jurisdiction under the Bill is divided between the civil court and the revenue officer. The large powers which have been conferred upon the revenue officer at the instance of the Bengal Government are, I hope I am mistaken, evidently intended to reduce the land administration of Bengal to the same dead-level system which prevails in Northern India, and which has so notoriously hampered the action of capital and clogged the springs of industry in that part of the country. Whether I refer to the provisions for the commutation of produce-rents into money-payments, to record-of-rights and settlement of rents, to preparation of tables of rates, to superintendence of contracts between the landlord and the tenant, the fixing of standard poles for measurement, the preparation of price-lists, or the like, the revenue officer has been made the fulcrum on which no small portion of the structure of the Bill rests. I would not object if the revenue officer were made only an executive or administrative officer, but as he has been vested with judicial functions, the objection becomes serious. Nothing, I conceive, can be more injurious to the interests of justice than a system which will place a judicial officer at the beck and nod of the Executive Government. On this point I would reproduce the enlightened and wise remarks of Lord Cornwallis contained in the preamble to Regulation II. of 1793:

All questions between the Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their raiyats (tenants), have hitherto been recognizable in the Courts of Maal Adawlut, or revenue courts. The collectors of revenue preside in these courts as judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor General in Council in the Department of Revenue. The proprietors can never consider the privileges which have been conferred upon them as secure whilst the revenue officers are vested with these judicial powers. Exclusive of the objections arising to these courts from their irregular, summary, and often *ex parte* proceedings, and from the collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another.. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security must be given to landed property and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The revenue officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the regulations, must be subjected to the cognizance of courts of judicature, superintended by judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The collectors of the revenue must not only be divested of the powers of deciding upon their own acts, but rendered amenable for them to the courts of judicature, and collect the public dues, subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it. No power will then exist in the country by which the rights vested in the landlords by the regulations can be infringed, or the value of landed property affected. Land must, in consequence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture, which are as essential to their own welfare as to the prosperity of the State.

The broad views which were expressed by the Government in 1793 apply with tenfold force in 1884.

Patní Tenures.

The zamíndárs, not without reason, object to the incorporation of the Patní law in this Bill. They hold that every word of that law has, during the last 65 years, received an accepted and authoritative meaning; that it is well understood by the zamíndárs, the patnídár, the Court and the amlah; that to modernise the language will be to disturb the recollections and traditions of more than three scores of years, and that it is therefore highly desirable to leave the Patní law as it is, text and construction, on the principle of letting well alone. I concur in this opinion and would leave out the Patní chapter from the Bill.

I have hastily drawn up my principal objections to the leading principles of the Bill. I have not had time to comment on details. I propose to bring them forward when the Committee meets in November next.

(signed) *Kristodás Pál.*

14 March 1884.

MEMORANDUM of DISSENT from the Finding of the Majority of the Select Committee on certain Provisions of the proposed Tenancy Bill, by the Honourable *T. M. Gibbon*, C.I.E.

1. Chapter IV. of the revised Bill provides that a raiyat holding his land at a fixed rate of rent shall be—

(*a.*) Subject to the same provisions with respect to transfer, succession, &c., as a tenure-holder; and,

(*b.*) Liable to be ejected from his holding on the ground of his having broken the terms of a written contract between him and his landlord on breach of which he is liable to be ejected.

The occupancy-raiyat claiming to hold his land at a fixed rate of rent is, in respect of his holding, placed in a more advantageous position than the ordinary occupancy-raiyat—

(*a.*) By the landlord being debarred from pre-empting should the raiyat transfer his holding to a third party;

(*b.*) In not being liable to be ejected should he use his land in such a way as to render it unfit for the purposes of his tenancy.

The majority of the Committee are of opinion that the incidents attached to an occupancy-holding the rent of which is fixed should be different from the incidents attached to an ordinary occupancy-holding; from this I dissent.

If the landlord is to be allowed the right to pre-empt in the one case, he should be allowed to do so in the other; if the raiyat is to be subject to eviction for rendering his land unfit for the purposes of the tenancy in the one case, he should be liable to be evicted in the other.

Every argument that can be adduced in favour of its being permitted in the one case would apply equally in the other.

Pre-emption is, I believe, an off-shoot of Muhammadan law; when the right to pre-empt is claimed among Hindús in Bihár, it is governed by custom.

The right to pre-empt under English law is, I believe, embodied in the provisions of this Bill for the first time, and only with the object of affording the landlord the means of protecting himself against persons who might purchase occupancy-rights with the intention of injuring him.

The landlord will be put to as great inconvenience by a hostile purchaser in the one case as he will be in the other; the same with a farm destroyed. It will be as useless to him in the one case as it will be in the other.

The effect of these provisions, coupled with Chapter VIII., will be ruinous to the landlord.

Every

Every time a landlord elects to exercise his right to pre-empt, a title to hold at fixed rates will be set up.

Every time a raiyat transfers his holding as a holding at fixed rates, or a transferee anticipating pre-emption takes measures to evade the law, even though the landlord does not wish to pre-empt, he will be compelled to contest the transfer, for fear his not contesting it at once may be taken as an admission of the transferee's right to hold at fixed rates in perpetuity.

Had the Committee seen its way to accepting my amendments and confined the operation of this chapter to holdings under mukarrarí pattá or raiyats whose rights had been declared by a decree of Court, although the landlords' rights would not have been restored to them in their entirety, the mischievous effects of encouraging persons to attempt to evade the law by setting up the presumption would have been avoided.

2. *Chapter V.—Restrictions on Sub-letting.*

In respect to the right mode of treating the subject of sub-letting, I am at variance, nearly on all points, with the majority of the Committee.

I do not think there is any necessity to place restrictions on sub letting with the sole object of discouraging it.

I believe the conversion of the occupancy-raiyat who sub-lets into a tenure-holder will be detrimental to the best interests of the landlords.

I believe it necessary to bring the system under some control, partly with a view to protect the occupancy-raiyat, but mainly with a view to protect the poorest class of cultivators, the raiyat's raiyats.

The power to sub-let is a necessity to the raiyat, possibly of even greater importance to him than the power to transfer.

It enables the occupancy-raiyat to tide over his temporary embarrassments.

It enables the labouring classes, who might not otherwise succeed in securing land to assist in the support of their families, to acquire it.

It is legal, and the practice has hitherto been under no sort of restriction, and under no sort of restrictions will it ever be abandoned.

As long as there exists a class of people craving for the possession of land and poorer than the people in possession, or a class who can put the land to more profitable use than the persons who at present hold it, or as long as the line which divides an usufructuary mortgage from a sub-lease remains undefined, sub-letting will be practised.

The sub-lessees should be protected, and while there is yet time the system should be brought under some sort of control.

The matter may soon force itself on the attention of the Government in such a way as to make the shirking of the question an impossibility.

3. *Chapter V.—On Enhancement.*

Under the provisions of the Draft Bill submitted to the Select Committee for report, the landlord might enter into an amicable arrangement with his tenant to receive an enhanced rent up to six annas in the rupee on former rates, provided the enhanced rent did not exceed one-fifth the value of the gross produce of the land in staple crops.

He might enhance under suit, on the grounds that the rate paid for the land was below the prevailing rate in the neighbourhood, on the ground that the productive powers of the land had increased otherwise than through the agency of the tenant, and also on account of a permanent rise in prices, provided the enhanced rents did not exceed one-fifth the value of the produce in staple crops, and provided it should in no instance exceed double the previous rent.

Both in the instance of voluntary enhancement and enhancement under suit, the enhanced rent was to hold good for a term of 10 years. Under the Bill, as revised by the Select Committee, enhancement under contract is in no instance to exceed four annas in the rupee.

Below two annas or up to two annas it shall hold good for seven years, above two annas for 15 years.

Judicial enhancement by reason of the holding being held at a rate below the rate prevailing in the neighbourhood may be made up to 50 per cent. increase on the former rate, and on account of a permanent increase in prices up to 25 per cent.

In any case decided on its merits, whether enhanced or not, the rate shall hold good for 15 years.

The one-fifth limit has been abandoned in both instances.

Legal enhancement has, I admit, been made very much easier than it is under the present law; but I humbly submit that the omission of a limit which was admitted on all hands to be unascertainable is not sufficient reason for placing the restrictions on enhancement that the majority of the Committee have thought it necessary to place upon it, either in the way of reducing the limit or increasing the term.

It is to be presumed that tenants with fixity of tenure secured to them will only agree to an enhanced rent out of Court, when they know that the landlord by going to Court might get a very much higher rate decreed.

I do not approve of the policy which drives both landlords and tenants to appeal to a court of law in matters which they can decide very much better for themselves.

In the matter of voluntary enhancement, it was only necessary to declare that enhancement under contract should be under registered agreement, and that the tenant in agreeing to it acted as a free agent.

If it was necessary to put a limit to the amount, the term should have been left to contract.

The fifteen-year limit being adopted in both instances, the landlord will exact the last farthing of what is due to him; we permit no compromise.

It is but fair to the Committee to say that I was alone in the desire to see the arbitrary limit on enhancement on account of the holding being held at a rate below the rent prevailing in the neighbourhood omitted; but I still think it would have been better to have left the matter to the discretion of the Courts.

The Courts have been given the power to make the enhancement gradual over a period of five years. They should be unfettered on both points.

4. *Chapter VIII.— On the right of an Occupancy-raiyat to hold at fixed Rates.*

Sections 64 (1), (2), (3).—The first allows a raiyat whose rents have not been changed from the time of the Permanent Settlement to hold his land at that rent in perpetuity.

The second allows it to be presumed, until the contrary is proved, that a raiyat who has held his land at one rent for 20 years previous to the introduction of the suit has held it at that rent from the time of the Permanent Settlement.

The third makes the above rule applicable to commuted rents also.

In my notes filed with the rest of the papers on the Bill, I recorded my dissent with the provisions of these sections as they then stood in the Bill; the alterations now made are alterations in form, not in substance.

During our discussion in Committee no arguments were submitted, no attempt was made to justify their being originally embodied in Act X. of 1859, none in reply to the assertion that they were an infringement on the terms of the Permanent Settlement, none to induce me to alter the opinion expressed by me in my notes.

The pleas urged for their retention in the present Bill were, that they represented the present law, that no case had been made out to induce the Committee to alter the present law, and that it is more difficult for the raiyat to prove his right to hold at fixed rates, than it is for the landlord to prove how, when and on what terms the raiyat was let into possession of the land.

We urged that the Permanent Settlement and its concomitant regulations

lations never intended that any class of raiyats other than mukarraídárs and istimrárdárs should hold their lands at one fixed, unalterable rate in perpetuity.

That it never contemplated the creation of any "privileged" class among occupancy-raiyats.

That Act X. of 1859, in creating a privileged class among occupancy-raiyats, trenched upon the proprietary rights of the landlords, and, in securing to the raiyats a right to hold their lands at a fixed rent in perpetuity, it reduced the proprietors to the position of annuitants on their own estates.

In declaring that the presumption shall run from 20 years previous to the introduction of the suit instead of from a fixed date, it became a constantly accruing title.

That the privilege being a valuable one, one that it is to the interest of the raiyat to acquire in the future and to the interest of the landlord to prevent his acquiring, it was detrimental to the best interests of both to retain it in the Bill in its present form; it caused constant friction.

At the same time as I denied the justice of its enactments in Act X. of 1859, I admitted that it would be harsh and unjust to cancel rights that had grown up under the operation of the present law.

To obviate all appearance of acting unjustly to raiyats who had secured such rights I proposed that the presumption should run from 20 years previous to the introduction of the Act, instead of, as it now does, 20 years previous to the bringing of the suit. I humbly submit that, had the Committee adopted this suggestion, raiyats who have secured to themselves the right to hold at fixed rates would have been secured in their titles, and the first instalment of justice would have been meted out to the zamíndárs. In a Bill which is admittedly being enacted to define the rights of landlord and tenant in the future, which is being passed to restore to the raiyat rights he is supposed to have been deprived of by the legislation of the past, or that he has forfeited by his own carelessness or by his own acts, it is but fair to the landlord to restore to him anything that the loose legislation of the past may have deprived him of.

If it is found impossible to return to him what he has been deprived of in the past, he should at least be protected in the future.

Under the terms of the Permanent Settlement, only mukarrarídárs and istimrárdárs were allowed to hold at fixed rates; not so occupancy-raiyats.

Previous to Act X. of 1859, any person claiming a right to hold at fixed rates or rents was obliged to prove his title to do so from a date 12 years antecedent to the decennial settlement, his title was otherwise not complete; that is to say, his title was not dependent on anything contained in the Permanent Settlement, but on the acts of the zamíndárs themselves previous to the settlement.

At the time of the Permanent Settlement the cultivators of the soil were divided into three classes—mukarrarídárs or tenure-holders, resident raiyats with prescriptive rights of occupancy, and non-resident raiyats or tenants-at-will. Act X. of 1859 was the first attempt made during 66 years to give non-resident raiyats rights of occupancy in the soil; in their case, at any rate, the right to hold at fixed rates cannot be founded on anything contained in the terms of the Permanent Settlement, and the landlord should not be called upon to rebut the presumption; the onus of proving the right should be cast on the raiyat.

At the time of the Permanent Settlement, and previous to Act X. of 1859, all raiyats with rights of occupancy were treated alike in the matter of rents—"all" were expected to pay the prevailing rate.

It is difficult to find out from a reference to the published papers relating to the passing of Act X. of 1859 what led up to the embodiment of these provisions in that Act.

In the draft Bill published in 1857, it only says, "hereditary raiyats holding at fixed rates of rent are entitled to receive pattás at those rates,"

but no mention is made of the 20 years presumption afterwards embodied in the Act of 1859.

Had the Bill of 1857 not been amended, the onus of proving his right to hold at fixed rates would still have been cast on the raiyat claiming it.

In all the published criticisms on this draft Act, Mr. Sconce alone fully discusses the raiyat's right to hold at fixed rates, but he founds the right upon the higher and more intelligible ground that "the permanent settlement was not one-sided, permanent for the landlord, and not permanent for the tenant;" but he errs in drawing this inference mainly from the provisions of Sections 51 and 60 of Regulation VIII. of 1793. On a reference to these sections it will be found that the former refers to taluqs, and from the operation of the latter the Province of Bíhár was exempted.

I would submit that, if we are to maintain the present law as against the landlord simply because it is the present law, we are not justified in going beyond the present law in favour of the raiyat as we have done in many instances.

In reference to the declaration often made that it is easier for the landlord to rebut the presumption than for the raiyat to prove his right, I would only repeat that the persons who make this assertion have no conception of the difficulties in the way of the landlord; that it is easier for any given number of tenants to prove their landlord's handwriting than for the landlord to prove the execution of documents executed by men who could not write; and that all the old regulations made it compulsory on the landlord to execute a document in favour of the raiyat. None made it compulsory on the raiyat to execute one in favour of the landlord.

The present law provides for cases in which the rent has always been paid in cash; under the present Bill, it is intended to go a step further and apply the rule to commuted rents.

Although I was in the unenviable position of sole dissentient on this point in Committee, I must still beg to be allowed to protest against this clause being made law.

It goes far beyond anything we are justified in enacting; it is equal to allowing every raiyat who formerly held at a grain rent, and now holds at a cash rent, to hold at one fixed, unalterable rent in the future.

Severely as these provisions bear on the landlords under the present law, they will bear ten times more severely on them in the future.

With the interchange of pattás, and kabúliyats made no longer necessary, the future is in the hands of the raiyat.

Useful as the powers to be given to the Local Governments under the Record-of-rights and Settlement of Rates Chapters may be made in the future, with these provisions unaltered our Courts will be deluged with litigation and the zamíndárs ruined.

Their effect can only be minimized by confining their provisions to rents to be commuted in the future and fixing a date from which the presumption is to count.

Their effect on the transfer and pre-emption clauses I have already noted.

5. *Chapter IX.—Sub-division of Holding.*

The Bill declares an occupancy holding shall in the future be transferable, and rightly declares it shall only be transferable as a whole.

A transfer of a portion of a holding is declared void as against the landlord.

The right to transfer has not hitherto been among the legal incidents of an occupancy-holding; the Courts have times out of number declined to give a transferee a right to hold the land when purchased as against the will of the landlord. In spite of the uncertain tenure of the transferee we see rights of occupancy being sold under voluntary sales and sold under decrees of Court in every district in the province.

In

In some districts it has become so fixed, it has become so common in spite of its illegality, that the custom now overrides the law.

The prevalence of the custom in spite of its illegality is now forcing the Government to declare it valid.

It is now proposed to legalise the transfer of an entire holding, but to declare it illegal as against a landlord to transfer a portion of a holding.

To legalise the transfer of a portion of a holding would be bad policy, bad for the landlord, worse for the raiyat; but to declare the act of a raiyat void as against the landlord and legal as against himself is to permit a state of things to grow up gradually which will eventually force the Government to interfere and legalise proceedings which they now deprecate.

To allow it to be illegal as against the landlord and legal as against the raiyat will not prevent the raiyat transferring it; it will only depreciate the market value of the holding.

As the raiyat's necessities arise, he will dispose of his holding piecemeal from the fact of its being invalid against his landlord possibly at one-half of its value.

There are three ways of preventing the raiyat disposing of his holding piecemeal, namely:—

To declare a transfer of a portion of a holding illegal as against both landlord and raiyat;

To allow the landlord to treat the transfer as an abandonment of that portion;

To deem the raiyat to have broken a condition on breach of which he is, under the terms of an agreement between him and his landlord, liable to be ejected.

The last is the most drastic, and the one I advocated.

6. *Chapter X.*

Under this chapter the Local Government may, at the request of a landlord, at the request of a large number of raiyats or to avert a dispute, order a settlement to be made of the rents of the whole estate.

Under this chapter, as it stands, the rent-roll settled or ascertained of the estate must hold good for a period of 15 years after a settlement is made, provided nothing debarred the landlord applying for an enhancement.

(1.) It would hold good in cases where the landlord applied for an enhancement, and the enhancement was allowed.

(2.) It would apply in cases where his application was disallowed.

(3.) It would apply where the landlord had a right to apply and did not.

(4.) It would hold good in all cases where the settlement was made at the request of a number of raiyats.

(5.) It would either compel the landlord to attempt to enhance the rents of all raiyats who were not parties to the application or to be debarred enhancing for 15 years.

(6.) It applies to occupancy and non-occupancy raiyats equally; it would therefore have this result, that it would at once give every non-occupancy-raiyat occupancy-rights.

(7.) It will induce raiyats to demand a settlement in order to acquire rights they are not entitled to. It permits of no compromise.

The period should stand as it stood in the Bill, namely, 10 years.

It should only apply to cases in which the landlord applied for an enhancement or occupancy-raiyats had any dispute in reference to their rent.

A non-occupancy raiyat should not be afforded the means of acquiring occupancy-rights under its shadow, or a most useful chapter will be turned into an instrument of oppression.

7. *Chapter XV.—Incumbrances.*

The last point on which I would wish to be allowed to record my dissent from the finding of the Committee is one of the utmost importance to the trader and also to the raiyat.

The Bill declares that a tenure, when sold under a decree of Court for arrears of rents, shall first be sold subject to registered incumbrances, but allows an occupancy-holding to be sold free from incumbrances.

The Bill certainly allows a person claiming to hold a lien on an occupancy-holding to protect his interests by paying up the arrears due and thereby to acquire a first mortgage; but this is not sufficient protection.

I do not agree with the Committee in thinking any distinction should be made between tenure-holders and occupancy-holdings.

Raiyats holding at fixed rates being subject to the same provisions as tenure-holders, will encourage litigation.

An attempt will be made to set aside the sales of occupancy-holdings by setting up the presumption to hold at fixed rates after sale.

Whether it will be the duty of the Court, the decree-holder, the debtor or the purchaser, to inquire whether it is an ordinary occupancy-holding or an occupancy-holding at fixed rents that is brought to sale, or who will be responsible for any loss, should any occur, is not clear.

It was necessary to declare that the incumbrance to be protected was binding on the whole of the holding, not only on a portion of it, but nothing more.

In not affording the occupancy raiyat this protection we injure his credit and force him to pay heavy interest, where he might borrow on easier terms.

(signed) *T. M. Gibbon.*

MEMORANDUM of DISSENT from the Finding of the Majority of the Select Committee on certain provisions of the proposed Tenancy Bill, by the Hon. *H. J. Reynolds.*

WHILE I concur generally with the majority of the Select Committee in accepting the provisions of the Bill as now revised, I think it right to add that in some particulars the interests of the tenants do not appear to me to be sufficiently protected. The Bill greatly facilitates the enhancement of rents, especially by the substitution of the simple ground of a rise in prices for the old rule which required proof of an increase in the value of the produce. While this great advantage has been given to the landlords, the check provided by Section 75 (*d.*) * of the original Bill has been taken away, the plea that the rate of rent paid by a raiyat is below the prevailing rate has been retained as a ground of enhancement, and the Bill provides no limitation whatever of the rent which a landlord may demand when a tenant (other than a settled raiyat) is first admitted to the occupation of land. Even in the case of a settled raiyat, the landlord may demand an increase of 25 per cent. on the rent previously paid. These sections put into the hands of landlords a powerful engine for enhancing rents up to the maximum amount which a tenant will agree to pay rather than give up the land. For, as agricultural holdings must, from time to time, fall into the hands of the landlords, and as the landlords are left free to let these

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* This clause declared that "the enhanced rent shall not in any case exceed one-fifth of the estimated average value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest-time."

(signed) *D. Fitzpatrick,*
Secretary to the Government of India.

these out at almost any rental they may think fit to demand, it is evident that the prevailing rate will steadily increase, and that this rate will regulate the rents not only of tenants newly admitted to occupation, but of the general body of the tenantry. For this reason, the retention of the prevailing rate as a ground of enhancement appears to me to be fraught with serious danger, and I should be glad to see it eliminated from the Bill.

Similarly, I am of opinion that Section 53 of the revised Bill does not sufficiently guard the interests of the tenant in cases in which the landlord applies for a commutation of produce-rents. The section ought to provide, first, that the money-rent shall not in any case exceed the rental at which the holding is entered in the landlord's road-cess returns; and, secondly, that if the commutation is based on the average value of the rent received by the landlord during the preceding 10 years, a substantial deduction shall be made from such value in consideration of the whole risk of cultivation being taken by the raiyat Provision was made for such a deduction in the draft Bill of the Rent Commission, and in the Bill submitted by the Government of Bengal.

The wording of Section 96 of the Bill, relating to abandonment, seems to me likely to open the door to serious abuses. When a raiyat has been deprived of his holding under the plea of his having abandoned it, it is of very little use to authorise him to institute a suit for the recovery of possession. If this section is necessary at all, its operation should be confined to holdings in the possession of non-occupancy raiyats. There is not the smallest reason for extending it to occupancy-holdings, as, in these cases, the landlord's rent is completely secured by his power of bringing the holding to sale for arrears.

(signed) *H. J. Reynolds.*

17 March 1884.

MEMORANDUM of DISSENT by the Honourable the Maharajah of *Darbhanga* from the Finding of the Majority of the Select Committee on the proposed Bengal Tenancy Bill; dated 1st April 1884.

Principles of the Bill.

I WOULD base my dissent to this Bill on the broad ground that it does not settle the land law of Bengal on a firmer, juster, or more satisfactory basis than it now stands on, and that it will neither keep the cultivation of the soil in the hands of a substantial peasantry able to withstand the vicissitudes of seasons, nor tend to promote the accumulation of wealth, the sound growth of credit, and the progress of agricultural improvements; also that while it fails to accomplish the only objects which in Lord Hartington's opinion justified the introduction of such a Bill, it at the same time involves great and entirely novel departures from both the ancient custom and the existing law of Bengal, a course which that very same authority has, with the true instinct of statesmanship, condemned as unadvisable.

Despatch, 17th August 1882, paragraph 21.

Despatch, 17th August 1882, paragraph 9.

I find it difficult to understand what are the principles on which Government proposes to change the present law of landlord and tenant. In the Statement of "Objects and Reasons" (which it is customary to send to the Members of the Council with every Bill), it is stated that Act X. of 1859, though admittedly beneficial, was in some important points so unsuccessful that it had resulted in Bíhár in rack-renting of raiyats and oppression by zamíndárs, and in Eastern Bengal in preventing zamíndárs from obtaining enhancements to which they were legally entitled, and even in difficulty in recovering their legal rents. From this we may gather that the main objects of the Bill are to protect raiyats on one hand and on the other to facilitate the zamíndárs' collection of legal rents and their making legal enhancements of the same.

If it can be shown that the results of Act X. of 1859 have really been such as Mr. Ilbert states (which, however, I would, as far as Bíhár is concerned, most emphatically deny, and of which, I would here specially notice, no proof whatever has been shown), then no landlord or raiyat could oppose

equitable measures taken to attain what, as I above notice, appear to be the nominal objects of the proposed Bill, nor do I see that in any of their various memorials the zamíndárs have raised the slightest objection on these points.

Had the Bill adhered simply to these objects, all would have been well; but departing altogether from them, clauses of the most revolutionary character, and infringing strictly guaranteed rights have been introduced, which have created a great deal of unrest and mistrust in the minds of the zamíndárs. It is true that the Government of India have never said that they wish to deprive the landlords of their vested rights; on the contrary, they have always declared that they do not wish in any way to trench on the vested rights of landlords that were guaranteed to them at the time of the Permanent Settlement, but the result of the passing of this Bill would be practically to negative such declaration.

No legislation whose object it is to deprive one class of its vested rights (without giving that class any compensation) and to give those rights to another class, has, I think, as yet been passed in India, nor do I think that legislation of this sort is ever likely to be enacted. Some such theories have been advocated by certain advanced thinkers in England, but in India, until this Bill appeared, no such theories had been heard of, and even in England there is a marked difference of opinion on this point among the most advanced thinkers.

Notwithstanding that the Government of India have, as I before remarked, never officially said that they wish to do away with the Permanent Settlement, and that the Secretary of State in his letter is most distinct in declaring that he is against any legislation that is likely to trench on the vested rights of any class of the community. Notwithstanding this, the proposed Rent Bill has created an amount of ill-feeling and distrust never before excited in India by any Bill affecting the rights of the people, and the cause of such feeling is that, although these professions have been made by Government, still the most of the clauses of the proposed Bill are revolutionary and are directly against the principles on which we are supposed to legislate. The feeling to which I allude has, of late, been greatly aggravated and intensified by a memorandum that was published by the Government of Bengal on 5th January 1884. I quote below a passage from this memorandum, and the principles contained in it are, I would suggest, quite enough to create distrust and ill-feeling in the mind of everybody interested in the Bill. The passage runs thus :—

> " The Lieutenant Governor then thought that, while it was well * * * * * to have history on one's side, yet the decision of the question turned more on appeals to the requirements of the present * * * * * than on historical researches. He therefore paid more attention to the practical character of the proposals made in the Bill than to their historical justification."

Apparently overlooking the fact that our rights as zamíndárs have been clearly defined and legislatively recorded at the time of the Permanent Settlement, the Lieutenant Governor here implies that our rights, and I suppose the raiyats' rights too, are but indistinct in the haze of historical research, and that in consequence alleged present wants affecting those rights should be met by measures, framed not in accordance with the past guarantees of the Government of India, but in the light of views held by a present Local Government. On this ground, he has, it would seem, been biased by views formed with regard to what some consider to be present necessities, and has disregarded the zamíndárs' vested rights.

We, the zamíndárs, on the other hand, hold that we are one of the classes most interested in this Bill, and that our rights naturally should not only be fully inquired into, but protected.

It may be thought, though I do not for one moment admit it, that the landlords' rights are prejudicial to the interests of the people at large. If so, the matter ought boldly to be faced, and landlords be allowed " compensation for disturbance " and ordered to surrender their rights. But it is hardly fair to the zamíndárs that the letter of the Government of Bengal of September last (which it now seems did not exhaustively enter into the question of the landlords' rights, and which had great weight with the deliberations of the Select Committee) should ever have been put forward before that Committee as the result of an impartial inquiry, and that the able minute of the Chief Justice

Justice which fully entered into the legal aspects of the question should not have been published with the other official papers.

The zamíndárs as a body have objected to the Bill ever since it came out of the hands of the Rent Commission. Meetings were held in almost every district of Bihár and Bengal, and in all these meetings the revolutionary clauses were condemned, and it was the general opinion that the Bill was a wanton interference with the existing customs and the ancient land law of the country. Raja Siva Prasad in Council in March last correctly described what are the feelings of the landed proprietors, when he said that, "if such a Bill passes, it will shake the faith and confidence of the people."

Under this head I would only add that the general principles of this Bill, viz., the proposal to invest occupancy-raiyats with these rights in all fresh lands on the very day that such lands are settled with them, the restrictions that are for the first time proposed to be placed on the right of free contract in favour of the raiyats without giving any reciprocal advantage to the zamíndár, and the limit of 25 per cent. enhancement that is also for the first time proposed to be placed in a Bill, one of the primary objects of which is to give the landlord further facilities for the enhancement of his rents, can but be looked upon by the zamíndárs as not only a wanton digression from the recognised laws and customs of the country, but as a confiscation of their vested rights. The Bengal and Bihár zamíndárs have, as a class, been the most loyal of Her Majesty's subjects in India, and trusting in the known good faith of the English Government, they have always believed that no Government of India would wish or think of depriving them of their vested rights, or of turning a deaf ear to their representations.

Under these circumstances the zamíndárs are naturally alarmed at the publication of such an official memorandum by the Bengal Government as that I have above quoted from, one which leads them to believe that the Government of Bengal has not thought fit to make a full inquiry into their rights before committing itself to the opinions expressed in its letter of September last.

I would ask what have the zamíndárs done to deserve this treatment? Are they really as rapacious and unscrupulous as the Government of Bengal thinks them to be? If so, where are the facts to show it? Have we got any statistics to show that it is the general custom in Bengal for the zamíndárs to change the lands of the tenants every twelfth year? Are there any statistics to show that the treatment of the non-occupancy-raiyats is so very oppressive as to justify the introduction of such an idea as compensation for disturbances in our legislature, an idea which is entirely novel to the people of the country, and which was not even dreamt of by the ancient law-givers? Is there, in fact, any proof that rack-renting and oppression in Bihár is so common as to call for the destruction of the proprietary rights?

A great number of official opinions have been published, but few or no statistics to show that the conduct of the zamíndárs is really so oppressive as described in the above-mentioned letter of the Bengal Government. Further I would ask, is there any ancient law to show that according to ancient custom the raiyats had occupancy-rights in all the village lands, and that the zamíndár had no proprietary rights in any lands except those that he cultivated himself?

I would now at more length record under different headings those points in connection with the proposed Bill as it left the hands of the Select Committee which lead me to dissent from it.

The Permanent Settlement.

Throughout the whole of the discussion of the Rent Bill it has always been officially declared that it is not the object of the Government to infringe on any of the rights that were guaranteed to the zamíndárs or raiyats at the time of the Permanent Settlement. On this point, therefore, the zamíndárs, the raiyats, and the Government are all at one. The question now to be decided is, what were these rights? On this point, however, there is a great difference of opinion, though I for one cannot make out how there can possibly be any difference of opinion on a well-defined question of this sort. The wording of the Permanent Settlement Regulations is most clear, and they distinctly declare the zamíndárs to be the actual "proprietors of the soil" and not mere rent-receivers, as some people seem to imagine.

There are others who go beyond this, and hold that the zamíndárs as a class did not exist before the time of the Permanent Settlement, and that before this period they were mere collectors of rent for the Government. In answer to these, I enclose for publication translations of two* firmans granted by the Muhammadan Emperors to two of the oldest families in Bihár; one of these was granted to the family of Bhojepur or Doomraon, and the other to the family of Darbhangá; and these clearly shew that at least some of the zamíndárí families of Bihár were in existence not only before the time of the Permanent Settlement, but even before the establishment of the English Government in any part of India.

As regards the rights conferred on the zamíndárs by the Permanent Settlement, I cannot do better than quote a passage from the regulation itself. It runs thus:—

"The Governor General in Council declares to the zamíndárs, independent taluqdárs, and *other actual proprietors of land*, that no alteration will be made in the assessment which they have respectively engaged to pay, but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever. The Governor General trusts that the proprietors of land sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves *in the cultivation of their lands* under the certainty that they will enjoy exclusively the fruit of their own good management and industry. To discharge the revenues at the stipulated periods without delay or evasion, and to conduct themselves with good faith and moderation towards their dependent taluqdárs and raiyats, are duties at all times indispensably required from the proprietors of land, and a strict observance of these duties is more than ever incumbent upon them for the benefits which they will themselves derive from the orders now issued."

Sir John Shore is one of his minutes writes thus:—

"I consider the zamíndárs as proprietors of the soil, to the property of which they succeed by right of inheritance, according to the laws of their own religion, and that the sovereign cannot justly exercise the power of depriving them of the succession nor of altering it when there are any legal heirs; the privilege of disposing of the land by sale or mortgage is derived from this fundamental right, and was exercised by the zamíndárs before we acquired the Dewany."

These are the opinions of Lord Cornwallis and Sir John Shore, the actual framers of the Permanent Settlement, and both of them are emphatic in declaring the zamíndárs to be the "proprietors of the soil." These opinions, moreover, were endorsed by no less a personage than Pitt. Mr. Dundas, the President of the Board of Control, in a letter to Lord Cornwallis, says:—

"I thought it indispensably necessary that the measure should originate with the Board of Control, and likewise that I should induce Mr. Pitt to become my partner in the final consideration of so important and controverted a measure. He accordingly agreed to shut himself up with me for 10 days at Wimbledon and attend to that business only. Charles Grant stayed with us a great part of the time. After a most minute and attentive consideration of the whole subject, I had the satisfaction to find Mr. Pitt entirely of the same opinion with us. We therefore settled a despatch upon the ideas we had framed, and sent it down to the Court of Directors."

As regards the rights of the raiyats, I might simply mention that the rights that are now proposed to be given to them are very different from those that they enjoyed at the time of the Permanent Settlement. In fact, they had properly speaking no proprietary rights in the land at all. They could not transfer their holdings, nor is there anything in the regulations to show that the raiyats had the right to hold on at fixed rates without the consent of the zamíndár. There is besides nothing to show that the rate of rent was regulated by the value of rice, wheat, and some other cheap food crops, which, according to a late declaration of the Secretary of the Bengal Government, are the only "staple crops." I would here quote a passage from Sir John Shore on this subject:—

"It is, however, generally understood that the raiyats by long occupancy acquire a right of possession to the soil, and are not subject to be removed: but this right does not *authorise them to sell or mortgage it, and it is so far distinct from a right of property.* This like all other rights under a despotic Government is precarious. The zamíndárs, when an increase has been forced upon them, have exercised the right of demanding it from the raiyats. If we admit the property of the soil to be solely vested in the zamíndárs, we must exclude any acknowledgment of such rights in favour of the raiyats, except where they may acquire it from the proprietor.

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* One firman has not been received from the Honourable the Maharaja.

"In every district throughout Bengal, where the license of extraction has not exceeded all rule, the rents of the land are regulated by known rates, and in some districts each village has its own. These rates are formed with respect to the produce of the land at so much per bigha; some lands produced two crops a year, some three; *the more profitable articles, such as mulberry plant, betel-leaf, tobacco, and sugarcane, render the value of the land proportionably great.* These rates must have been fixed upon a measurement of the land, and the settlement of Turymul may have furnished the basis of them. In the course of time cesses were superadded to that standard, and became included on a subsequent valuation, the rates varying with each succeeding measurement. When a measurement of the land takes place, the existing rates are confirmed and generally with some additions."

In this passage the definition of staple crops is not limited to rice and wheat and the other cheap food crops; on the other hand, it shows that in those days the value of the more valuable kinds of produce like tobacco and mulberry was taken into consideration.

Before concluding this subject I quote a passage from another high authority who lived immediately after the Permanent Settlement. I refer to Lord Metcalfe, who, as is well known, was no admirer of the Permanent Settlement, as is evident from the passage I quote below, but he also is of the opinion that the zamíndárs were vested with the proprietary rights in the soil by the Permanent Settlement:—

"I need not say that I am no advocate for the regulation proprietors of our creation. I consider their creation to have been an enormous error, which has not been attended by any benefit whatever; but having created them, and declared them to be proprietors, we gave them, I conceive, after the reservation of the Government revenue, all the rights of property that it was in our power to give, that is, all the rights that did not previously belong to others. We had no right to destroy the pre-existing property of others, in order to confer it on our new-fangled proprietors; we could not legally or justly give them a single field which previously belonged to others; but we could and did give them the right of the Government in every field in their zamíndárí, and we superadded the full property in lands, not owned or occupied on a permanent tenure by others. Having done so, although we have a right, and are bound to protect the ancient cultivating proprietors and occupants in all their rights, whatever they were, and ought to be ashamed of ourselves for not having done so, we have no right to step in, between our proprietor and the cultivator of his own planting, on lands declared to be his own property, with a view to destroy the engagement which they have mutually entered into, and prescribe others of our own fashioning * * * * I would let the regulation proprietor have all his just rights. It could never have been intended when we created proprietors that they were to be merely entitled to a per-centage on the revenue. It was meant that they should be really proprietors, which they are and ought to be, in every case in which that would not affect the previous rights of others, but as we had no power, that is, no lawful power, to take away the rights of others, we have not given them one jot of those rights, and are bound to maintain the ancient proprietors and holders of permanent rights against those of our own creation."

In a disputed legal question of this sort it would have been well if the opinions of the High Court Justices, the Advocate General, and the other law officers of the Government, and some of the leading lawyers of the country have been consulted. But in this matter, as in the matter of statistics, I find a remarkable want of information among the official papers that have been published. One of the zamíndár's chief stand-points is the Permanent Settlement, and on this point it was most necessary that the Select Committee should have the best legal opinions procurable. No such opinions have, however, been consulted.

Chapter III. of Bill—Tenure-holders.

Tenure-holders represent but one portion of the proprietary interest in land, as distinguished from the raiyati interest. I do not see any special necessity for legislating on the present occasion for tenure-holders, properly so called. Their rights are pretty well ascertained, and as a class they at least are quite able to look after their own interests. I could understand the formal reproduction of the provisions of Act VIII. of 1869, B.C., with respect to tenures and under-tenures, but I fail to perceive sufficient reason or justification for changes in the substantive law in this respect. In my opinion, the whole of Chapter III. should be recast, the provisions of Regulation VIII. of 1819 retained in their integrity, and the relevant provisions of the Bengal Council Act VIII. of 1869 simply reproduced.

The injustice of substantive changes is very much enhanced by the direct and indirect promotion of certain occupancy-raiyats (viz., those who sublet and those who possess more than 100 bighas) to the status of tenure-holders, as explained at length by my honourable colleague.

Chapter IV. of Bill—Raiyats holding at fixed Rates.

Whatever might have been the necessity felt by the zamíndárs for facilities in the collection of arrears of rent since the imposition of new Government cesses on lands, and however urgent the necessity felt by a certain class of landlords in Bengal proper for increased facilities as to enhancement of rents, I may say that the zamíndárs of Bengal and Bíhár are entirely at one that they would much rather put up with existing conveniences and hardships than accept the gift of the proposed legislation. If however the law is to be changed, it is but fair and just that the novel provisions of Act X. of 1859, which are admitted by the highest authorities to have worked wrongful loss to the zamíndárs, should be modified or repealed. The presumption arising in the tenants' favour from 20 years' holding at an uniform rate of rent may be said now to have worked out its object, as every tenant who cared for it has had an opportunity for the last 25 years to insist upon the granting of receipts and to take care for their preservation. Such being the case, apart from any other facts, it would have been proper to extend the period of uniform payment which should give rise to the presumption. But the necessity for such a change is rendered more urgent by the fact that in its existing shape it works positive and unmerited loss to the zamíndár. The Honourable Rai Bahádár has in his Dissent already called attention to the recorded opinions of the Honourable Mr. Reynolds in his memorandum, dated the 18th May 1881. The same opinions have been recorded by Mr. Dampier, Senior Member of the Board of Revenue and President of the Rent Commission, in his note dated the 19th May 1881, and although the Honourable Mr. Reynolds thought fit to change his mind, the arguments which were advanced by himself and by Mr. Dampier have not been refuted. Mr. Dampier condemns the retention of the presumption section not only on the ground already advanced by the Honourable Mr. Reynolds, that the real effect of such a statutory presumption has been not conservative but productive, creating "in the vast majority of instances new rights, instead of merely establishing those which already exist, but for the support of which full proof is not attainable," but also on the further ground of public policy that "the presumption amounts practically to a declaration that when an estate passes to a purchaser from a hostile vendor at a forced sale, in the majority of which cases no zamíndárí papers are available to the purchaser, every tenant who has held without change of rents for 20 years shall acquire the right of permanent occupancy at a fixed rent." Mr. Dampier adds a further argument on the ground of public policy, that such a provision drives the landlords to institute enhancement suits every 20 years, "lest their rights should pass away *sub-silentio*."

Vide Sections 3 and 4. Act X. of 1859.

Report of the Government of Bengal on the proposed amendment of the law of Landlord and Tenant in that Province, Vol. I., pp. 181, 182.
Ditto, Vol. II., p. 460.

Chapter V. of Bill—Occupancy Raiyats.

In approaching this subject we must bear in mind the great distinction between the actual cultivator and the middleman. Whatever increases the prosperity of the agriculturist conduces to the prosperity of the nation, but the middleman whose prosperity is dependant on what he can squeeze out of the cultivator, is a useless member of society, who simply adds to the difficulties of the situation. Whatever tenderness is shown by the ancient custom of the country or the "official literature" of byegone generations, is limited to the cultivators of the soil and not to those who having gone into occupation of land for agricultural purposes, set themselves up as microscopic proprietors displaying within their limited spheres the quintessence of all the possible vices and abuses of the zamíndárí system. If there is to be a radical change in the law this is a class of men who ought to be excised from our agricultural system, as they are the greatest hindrance towards the rise of that "substantial peasantry able to withstand the vicissitudes of seasons" which it is desired to bring into existence.

existence. I am quite willing to recognise the necessity of allowing the validity of sub-letting in certain special cases, but beyond that limit I would not go. In all cases where the occupation of land was allowed for agricultural purposes, I would insist upon the right of occupancy being made additional upon the *bonâ fide* cultivation of the land by the tenant himself, or by hired labour, and I would not allow the transfer to any other than a resident cultivator. Two of my amendments proposed in Committee embraced this question. The one allowing the sub-letting of an entire holding in case of females, minors, &c., was adopted, but the other which would restrict the transfer to *bonâ fide* resident cultivators was not carried.

It is a well-established fact that sub-letting has brought ruin upon the cultivator; and that middlemen have the most to answer with respect to the embarrassment of the agricultural situation, and that a raiyat holding direct under the zamíndár is in a much better position than the *korfa* or *kalait* raiyat. In the face of this, it is simply a wanton aggravation of existing difficulties to raise occupancy-raiyats *en masse* to the status of tenure-holders and rent-receivers, and to afford facilities to other than cultivators to acquire by occupation or otherwise the right of occupancy. Taking for granted that the raiyat requires protection from the arbitrary act of zamíndárs who purposely shift them from land to land to prevent their acquiring a right of occupancy in any one given bit of land (a practice which I contend has not been proved), the Select Committee would create a presumption in the raiyat's favour (viz., that because they now hold land they *must* have held that land for 12 years) a presumption opposed in itself to the actual state of things in the agricultural population, as occupancy of land is daily changing, owing to causes over which the zamíndár has no control. This presumption ignores the circumstances that there are vast areas of riparian land in these provinces, which are constantly the subject of alluvion and diluvion; that throughout the border lands of these provinces there is still in force an active process of reclamation from jungle; that in the interior districts the pressure of population upon the soil has led, and is daily leading to the encroachment of cultivation upon waste and pasture lands; that the existence is notorious of a large number of *paikasht* cultivators who try their chances all round without being attached to any particular locality; and that there are numerous cases in which old raiyats voluntarily relinquish their jotes owing to a diminution of the productive qualities of the soil, and other sufficient reasons. Taking all these circumstances into consideration, can it be said that a fair and reasonable judge, in the absence of any other evidence whatsoever affecting the probabilities of the case, could, from the mere fact of a tenant's holding a plot of land to-day, deduce, or much less feel himself bound to deduce, that the same tenant must have occupied the whole or at least a part of the same plot for the last 12 years.

A good sample will be found at pp. VIII., IX., 335-60 of the first vol. of an avowedly anti-zamíndárí compilation entitled "The Zamíndárí Settlement of Bengal," quoting from various official and non-official utterances.

With reference to the proposed presumption that all raiyats have occupancy-rights, I would here cite a few instances where I think it will be simply impossible for the zamíndár or thiccadar, though the raiyats have not got occupancy-rights, to rebut such a presumption.

1*st*.—In those cases where the landlord acquires possession by buying up the property at an enforced sale for Government revenue, the defaulting zamíndár whose property is thus bought up, is naturally in the majority of such cases hostile to the man who has bought it, and so refuses to give up the papers of past years. How is a zamíndár in such cases to rebut the presumption?

2*nd*.—Where one estate is let out to two or more patnídars or thiccadars, how is a patnídar in such cases to rebut the presumption that the raiyat has not been holding lands in the other patní or thicca lands of the estate?

This leads me to protest against the proposal to invest an occupancy-raiyat (though his holding may be only one yard in area) with occupancy-rights in all fresh lands he takes up, on the very same day that such lands are settled with him. Because a raiyat can cultivate a small piece of land, that is no reason why he should be able to cultivate large bits of land. He may take them simply to sub-let or sell it.

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Then, too, the word "estate" is most vague. An estate might mean a small bit of land, or it might mean large tracts of the country. The word "village" would be more convenient. It has a well-defined boundary and it represents a specific area.

Transfer and Pre-emption of Occupancy Rights.

It is abundantly clear that by the ancient land law of the country no raiyat, resident or non-resident, had the power to sell or mortgage his raiyatí interest.* The legislature and the judges have respected this by holding that the right of occupancy is not transferable against the will of the landlord, except by custom. The contention on the part of the Government seems to be that, as a matter of fact, the custom has grown everywhere, but the statistics to which appeal is made are not really to the point, as they do not show in how many cases the zamíndár was a consenting party before or after the transfer.

* "It is generally understood that the raiyats by long occupancy acquire a right of possession in the soil, and are not subject to be removed, but this right *does not authorise them to sell or mortgage it.*"
Mr. Short's Minute of 28th June 1879; III., Harrington's Analysis, page 434.

A custom of this kind would be so notorious that there ought not to be the slightest difficulty in proving it in a court of justice to the satisfaction of all classes and interests, and I maintain that the wholesale introduction of transferability is uncalled for in the absence (1st) of specific and proper evidence to show that it is universally recognised; and (2nd) of any particular instances of failure of justice in the civil courts from the inability of purchasers to establish a really existing and flourishing custom. Such a wholesale extension of occupancy-rights, as is now contemplated, must be detrimental to both proprietor and village community alike, as it takes from the former the power of keeping on his land those peaceful and friendly raiyats whom it is his interest to retain, and opens the door for them to be ousted by mahájans or hostile zamíndárs, who can buy up their rights, and settling a different class on their lands, bring quarrels, litigation, and ruin into a village.

I would suggest that the old custom of the country, by which such holdings were not transferable, was one specially tending to the security and well-being of the village community, as it prevented to a great extent those who had no interest in it forcing their way therein and by setting up interest opposed to those of the community at large, and of their proprietors, ruining the village peace and prosperity.

In support of this theory I would point to the disastrous consequence attendant on right of transfer having been recognised among the Dekhan raiyats, and also to the disturbance among the Sonthals, due mainly to the oppression of the mahájans into whose hands they had fallen; and I desire to protest against the raiyats on my own and other zamíndáries being, as a natural result if this Bill is passed, made over to the tender mercies of mahájans and other land speculators.

It is true that compensation for the introduction of the new right of transfer is offered to the proprietor in a proposed right of pre-emption, but why, I would ask, should the proprietor be forced to buy what is already his own? The proposed restricted right of pre-emption will be but small relief to the proprietor, and I would suggest that if allowed at all it should be made far more effective by its extension to every transfer of a raiyatí right (except by way of inheritance), and if the same right could be extended to the case of "tenures" as well, a self-acting machinery would be provided for the extinction of middlemen's interests, much to the good of all parties concerned. *I would much sooner prefer free sale to boná fide resident cultivators*, than the right of sale to anyone and every one, subject to a phantom right of pre-emption. It is supposed that the transferablity of occupancy-rights would be of benefit to indigo planters in Bíhár, but I know many such who are opposed to the proposal, and the Bengal planters as a class are entirely opposed to the same.

Commutation of Rents.

In considering this question I would notice first, that Bhowli or rent payment in kind is not the custom in my own estates, nor do I consider that in those parts it would be as advantageous to either proprietor or cultivator as money payment of rent. But there are parts of Bíhár peculiarly circumstanced where,

where Bhowli is the custom, and money payment the exception; and suddenly to introduce so complete a change as is contemplated under this heading, would, I think, press very heavily on all classes. This is a matter which may fairly be left to time, the experience of past generations showing that, with the gradual increase of prosperity and civilization, payments of rent in kind have a tendency to change into money payments, and I would deprecate such a change being suddenly forced on.

Personally this question does not much affect me; but as the representative of the Bíhár zamíndárs, I would here record their opinions, and that I think they are worthy of consideration.

The practice of paying rents in kind was no doubt the original method for paying rents, and its retention in parts of Bíhár is due to its manifold advantages in the present condition of the people, as well as to the known desire of the people of this country to stick to old customs. Akbar's great Hindú financier, Todur Mul, had fixed the rent of the raiyat at $\frac{1}{3}$ of the gross produce. Aurungzebe had increased this to $\frac{1}{2}$ (one-half); and the zamíndárs, taking into consideration the difficulty of the appraisement of the price of the straw, have fixed the share at $\frac{9}{16}$ (nine-sixteenths) of the produce of the crops, and giving to the raiyats the whole value of the straw.

Where the agricultural community has no other occupation to fall back upon, it is distinctly an advantage to the cultivator that however small the produce of his field in a season of scarcity, he should retain a part of it; on the other hand, a tenant who is bound to pay a uniform money rent finds that in many cases the value of his whole crop is not equal to the landlord's fixed money demand. Viewed in this light, the cultivator who pays rent in kind is much better prepared to meet scarcity than the tenant who pays money rent.

As an example of what I mean take a year in which crops have totally failed, the Bhowli-holder is liable for nothing to his landlord that year as he has no crop to share with him, but the money rent payer is liable for his full year's rent irrespective of the failure of his crop, and may be driven either to borrow at ruinous rates of interest at a time when his credit is peculiarly low, or to pay the costs and interests of a suit by the landlord. The provision for commutation of rents in kind is therefore held to be undesirable as rendering the agricultural population more liable to suffer in times of scarcity and famine.

Even in ordinary times (as the demand for rent generally coincides with the harvest), tenants paying rents in cash have in some cases, though the cases may be rare, to part with their grain at very low prices. The Bhowli tenant, on the contrary, has no such sacrifice to make.

Then, again, in large tracts of alluvial formation, when a single season may make an immense difference in the productive qualities of the soil (either for good or for evil) zamíndárs and raiyats find the Bhowli system to be that most convenient and equitable for settling rents.

Further, in a Bhowli system of settlement the landlord every year gets the benefit of sharing with the tenant any increase in the productive powers of the soil, or in the area, or in the value of the produce; and if there is any decrease the loss is shared by both the parties. There is therefore much less cause for any of the parties to be discontented, and then there is much less occasion for the landlords to institute suits for enhancement.

So much for the commutation itself. As to the manner of working it out, the revenue officer is to be empowered to fix the money rents, and the Bill provides that in settling such rates he should be guided by the rate of money rents prevalent in the neighbourhood, and the average value of the rent actually received by the landlord for the last 10 years. These rules are but vague; and as we know that, as a fact, different officers take very different views on all such matters; I do not think that a question of such vital importance should be left to a revenue officer to decide according to his own individual opinion, and that such a matter is one that can only be decided satisfactorily by mutual agreement or private contract between the landlord and his tenant. It is also argued on the side of the zamíndárs that it is more profitable to the landlord to get the share of the produce in kind than to get a money rent, because (unlike the raiyat) he can afford to keep back his grain from the market at harvest time, and sell it to better advantage at a time of the year when the price of the grains is dear. This commutation therefore would amount in practice to a

reduction of the income of the zamíndárs, which I do not suppose is the real intention of the Government.

I hope shortly to send in some statistical information regarding this, which I have not as yet had time to complete. There is another point in connection with this which is worthy of notice in the raiyat's interest, viz., that where the Bhowli system holds, the zamíndár alone at his own cost keeps up the necessary dhoor bandhs for irrigation purposes, and no cost in connection with this, although they directly benefit by it, falls on the raiyats. Whereas where rent is payable in money, if the zamíndár improves the productive powers of the land by irrigation works the raiyat is liable to have his rents enhanced, and according to local custom is expected to share the cost of keeping existing bandhs, &c., in repair with his zamíndár,

Enhancement.

About this subject, as on the subject of realization of rents, it is thought advisable that the zamíndárs should get further facilities. The present law allows enhancement of the rate of rent through the Civil Court on three grounds only, the most important being, that the value of the produce, or of the productive power of the land, has been increased, otherwise than at the expense or by the agency of the raiyat, and everybody must admit that this principle is very fair, but it has been found in practice that it is most difficult to prove the "increase" in court of law, and so enhancement through the Law Courts is almost at a deadlock. The zamíndár therefore finds it easier and less expensive to enhance his rents by private contract, but even this is by no means at all easy to accomplish owing to the unwillingness of the raiyats to pay any enhancement which they think is not obtainable through the Civil Court.

However, since Government has begun to publish the weekly price-lists of food-crops in each district in the Gazette, we have better statistics to show the rise in prices. I therefore consider the proposal to make these price-lists the conclusive evidence of a rise in the prices a very good one, and by doing this the zamíndárs will no doubt get a certain amount of relief. I would however propose that the general wording of the present law should be retained and that the ground of enhancement should not be restricted, as is now proposed.

There are cases where the value of lands improves through other causes than those contemplated in this Bill; such cases might be rare and perhaps difficult to prove, but that is no reason why their existence should not be provided for.

The definition of "staple crops" in connection with enhancement should not, I think, be limited to cheap food crops only.

All the old regulations are unanimous in declaring that the zamíndárs should enjoy the benefit of a change in the crops in the country. Sir John Shore mentions this to have been the custom before the Permanent Settlement. At the present time, too, not only the produce of the food-crops, but sugarcane, tobacco, betel, and various other crops also are appraised in those parts of the country where the rent is received in kind, and in the other districts we find a marked degree of difference in the rate of rents between those lands that grow cheap food-crops and those that grow the more valuable crops.

This provision therefore is a "novel departure from the ancient law and the recognised customs of the country."

I see no necessity for any such additions being made to the old law which left it to the Court to give a "fair and equitable rate of rent" in all disputed cases, nor do I see the necessity for limiting the rate of enhancement. The inquiries which the Civil Court would have to make in each case would put that Court in the best position to know what rate of enhancement would be fair and equitable, and there seems no sufficient reason for curtailing its power, and preventing its giving a higher enhancement than four annas in the rupee, even though it might be satisfied that a higher rate would be fair and equitable

As regards the private enhancements I fail to see the justice of doing away with free contract in this case. It is no easy thing for a landlord to get any enhancement by a private arrangement, and it is most undesirable that any loophole

loophole should be left for future dispute in such cases, and that the raiyat should at the time of the registration of his kabúliyats have the opportunity to contest his liability under the contract which he has already signed.

Chapter IX. of Bill—Management of Joint Estates.

I gather from paragraph 97 of the Statement of Objects and Reasons appended to the original Bill introduced in Council, and from the extracts referred to therein, that there exists an impression that the provisions for the appointment of managers for joint owners are much needed; and that the proposed legislation in that respect is necessitated by the repeal, in 1874, of certain portions of Regulation V. of 1827, which has made the present law, Regulation V. of 1812, section 26, unworkable. The old regulations gave the power to the Government to appoint managers for properties, where there are joint proprietors, and where the conduct of these joint proprietors caused an apprehension of a breach of the peace. These regulations, however, were passed long before the enactment of the Criminal Procedure Code, according to which a breach of the peace was made a grave criminal offence. It was therefore found no longer necessary to make breach of the peace a civil as well as a criminal offence. The repeal of these regulations in 1874 was therefore on the footing of obsolete enactments, and consequently there is every reason, before reviving such procedure, to inquire how far the regulations of 1812 and 1827 were actually resorted to by public officers or private complainants, and with what success. I put a definite question to this effect in committee, but the only reply I obtained was that the information would be looked after; and to this day I have heard no more about it. In my humble opinion when such a law has solemnly been repealed as obsolete, the proposal for its revival ought to be preceded by the collection and publication of statistics. Neither theories nor mere general impressions should precede proposals for legislation. Facts, well established and clearly arranged, can alone justify them.

I cannot leave this subject without remarking that with the progress of education and the spread of levelling ideas a purely patriarchal form of Government is no longer needed for the benefit of the raiyats. If these provisions therefore are to be re-introduced, the proprietors of estates and tenures, and even the novel tenure-holders created by this Bill, could but view with dislike the proposal which leaves the entire management of their properties in the hands of the district judge *without any right of appeal.* Is there less chance of a judge giving a wrong decision in such cases that his order in them is to be final, or is the possible inquiry which may be caused by his order likely to be less than in the many other cases which as judge he has to decide, but in which the law refuses finality to his judgment, and provides for an appeal to the High Court.

While on this subject, I might mention that I proposed certain restrictions to be put on the management charges and the powers of the managers; I further proposed that the management charges should, on no account, be more than 12 per cent. of the gross income of the estate; and that in making this suggestion I was justified by the fact that in some cases the management charges under Government in the Court of Wards has exceeded even 20 per cent. of the gross income.

"The rate varied from division to division, having been as high as 25 per cent. in Rajsháhi and Kûch Bíhár (where a thorough reorganisation of the system of management is urgently called for, and is now in progress), and as low as 5·1 per cent. in Orissa."—(Administration Report of Bengal, 1879–80, pages 44 and 45.)

Besides this, I made a proposal to the effect that no managers should be appointed on the ground of breach of the peace, unless all or at least one of the proprietors apply for a manager. I made this proposal as I thought that unless we put some restrictions of this sort we are bound to see all the raiyats apply for joint managers in all "ijmali" estates and in all cases where they have instituted criminal proceedings for breach of the peace, simply to annoy the zamíndárs, and have failed. The criminal codes can more effectually treat this question than civil courts, as the powers vested in the criminal courts for the prevention of breaches of the peace are much more effective than those with which the civil courts are now proposed to be vested.

There was a third proposal which I made to the Select Committee, which was, that the managers should on no account be allowed to have the power of lowering rents without the consent of all the joint proprietors. I naturally think (and I moreover believe that everybody who has studied the subject at all carefully, or has any experience in the management of landed estates, and is besides not committed to official opinions on the subject, will agree with me in thinking) that the manager, who after all has only a temporary interest in the village, and who is supervised by a Government officer, whose other duties do not allow of his giving sufficient time to such supervision, would, according to the proposed Bill, have splendid opportunities of robbing the zamíndárs of their yearly income by reducing the rents of the raiyats, and filling his own pocket by taking a commission from the said raiyats as bribe for such reduction. What is the class from which the Government can, in such cases, recruit their staff of managers. Looking to the pay of such appointments it can only be much the same class from which they now recruit their Ameens and police inspectors, who, as is notorious, are one of the greatest curses of the country. The Government cannot possibly hope to recruit their managers from the higher class of native gentry, on account of the small salaries such appointments are likely to command. The incomes of the ordinary joint proprietors are, as a rule, very small; and moreover in these days of heavy criminal penalties for "breaches of the peace" it is not likely that Government will be able to appoint one manager for a large number of estates, and so, by insuring his getting a sufficiently large amount of monthly salary, secure the appointment of a trustworthy man.

To all the proposals about restrictions on the power of the managers, and the expenses of their establishment (which, in the opinions of the zamíndárs I have consulted, seem strictly necessary) I got the answer in Select Committee that the High Court are to be asked to frame rules. But we, the zamíndárs, maintain that the functions of the managers should not be left undefined, but that the Legislature should clearly define them. If it is really thought that the High Court knows more of this subject than the Legislative Council, then why is it that the High Court was not consulted on the very much more important questions concerning the legal rights of zamíndárs guaranteed to them by the Permanent Settlement.

Chapter XII. of Bill—Record of Rights.

It has been alleged that in some estates the zamíndárs do not keep up any proper records. If so, then in such zamíndárí survey and proper record of rights might be necessary: but this is no reason why in those estates where the records are perfect and where those concerned are contented with the records they have got, the raiyat and the zamíndár should be put to the trouble of a survey.

All the zamíndárs measure their estates periodically according to the old system of measurement, and they have all some sort of rough measurement papers, and there are some who even go beyond this and have their estates not only measured but mapped out very much in the same way as is done in the estates of the Government. Their papers show the exact area and position of the raiyats' holdings, as well as the quality of the land and rates of rent payable.

There are a few zamíndárs who go even beyond this and induce all their raiyats to sign the record book after fully explaining to each of them the particulars of his field, &c. This is no easy task for the zamíndár. He has not, like the Settlement Officer of the Government in its khass mehals, the power to compel the attendance of the raiyats, hence he has to incur a great deal of expense and the consequent trouble is immense.

Under these circumstances can it be said that it is necessary to have a general survey; at least those zamíndárís where the records are perfect should, I think, be exempted.

I propose that if there is to be a survey it should be taken in hand in only those villages where the raiyats or zamíndárs wish it, as I do not see the justice of saddling them with the expenses of a survey which they do not wish for, and which instead of doing good is calculated to give rise to endless litigation.

In 1876 a law was passed compelling the zamíndárs to register their rights. We all know the amount of litigation this gave rise to. People who had no

claims

claims whatever came forward in the hope of getting some sort of claim recognised, and the result is that though eight years have elapsed since this Act was passed, many of the cases under it are still undecided, and many of the landlords who really have the best possible title to their properties, in addition to the attendant anxiety, have been unnecessarily put to a great deal of expense.

So much for the record of the rights of the zamíndárs who do not represent even 1 per cent. of the population.

If the period of eight years has been found insufficient to record the rights of such a small class of the people, will it not take 10 times as long to record the rights of the tenants who represent nearly the whole population of Bengal and Bíhár, and will not the litigation, expense, worry, and agitation during this long period consequent on the necessary inquiries be injurious to all classes?

These are reasons which lead me to think that it is unnecessary to introduce the survey in any village except where those concerned request the Government to do it.

Record of Zamíndár's Khamar or Private Lands.

This subject has been dealt with so very ably in the Dissent by my honourable colleague, Rai Kristo Dás Pál Bahádár, that I need not add anything more than that I fully agree with all he has said about it.

Chapter XIII. of Bill—Distraint and Realisation of Rents.

It has been admitted on all sides that the zamíndárs need some more speedy and certain means for realisation of rent than they now enjoy, and that the present law is quite inoperative in those cases where all the tenants combine not to pay rents. Such a high authority as Sir James Caird recognises the difficulties of the zamíndárs in those estates where the "no rent" cry is once raised, and even in the Bengal Government's memorandum of January last this difficulty is in a way admitted.

We zamíndárs had therefore naturally hoped that with this object we would be given some increased facilities for realisation of rent. In this, however, we have been greatly disappointed, and this Bill, if passed as it now stands, would leave us in this respect in a worse position than we now are, as instead of providing a summary and inexpensive method for the collection of our legal rents, it practically does away with distraint, the one only sure, equitable, and inexpensive process now allowed to us.

The present law provides that in those cases where the raiyats fall into arrears the zamíndár can by his own agency serve them with notices stating the particulars of their arrears, and then at once distrain their crops. This is the only system possible in those parts of the country that lie on the frontier where a large portion of the tenants are not even British subjects, and therefore able to evade the jurisdiction of the British Civil Courts, and also in those vast tracts like the Cosi dearah in the Purneah District which are inhabited by a semi-nomadic class of tenants who seldom stop in the same locality for more than one harvest.

Even a day's delay in such cases is fatal. The crops, if the raiyats refuse to pay their rent, must be distrained as soon as they are ripe, and the raiyats should not have sufficient time to cut them without paying in their rents, as they leave the village for good directly they have gathered the harvest.

The Bill, however, proposes that in future the landlords must in every such case apply to the Civil Court, and that the crops should be only attached through that Court, thereby giving to the raiyat ample time to cut and carry off his crop before the Court officers can reach the spot to distrain it. Such a procedure not only throws extra and new costs on the zamíndár, on account of court-fees and legal agency which must be employed, but it will result in the landlord having no power whatever to realise his rents from those semi-nomadic raiyats who leave the village directly after they have cut their crops. His only remedy will now lie in a civil suit against a raiyat of whose whereabouts even he may be ignorant, and to execute a decree against whom, if he succeeds in obtaining one, will be almost impossible.

I would specially record that it appears to me to be very strange that a Bill, one of the avowed objects of which was to give to landlords what is admittedly so necessary, viz., some increased facilities for the realisation of their rents, should leave the hands of the Select Committee in such a form that instead of doing this, it intensifies their present difficulties and deprives them of the little relief they now enjoy.

It is the proprietors who are responsible for payment of their share of the Government revenue, which they have to collect from their raiyats, and it is not the Government revenue only that they have to realise; they have also of late been made to collect from their raiyats their share of certain Government cesses, and if by sunset of the day fixed for payment of the Government revenue they have not paid in their Government dues, they are liable to be summarily sold up, and turned out of their properties, and yet they are not to be given any means by which they can ensure their raiyats paying to them what they are bound under such a heavy penalty to pay in to the Government to a day.

The practical working of the law as it now stands is this, that a proprietor may be sold up and ejected from his ancestral property owing to no fault of his own, but to his inability to recover his legal rents from his raiyats, an inability due to a defect in our existing laws, a defect which, as I above show, the proposed Bill aggravates.

I do not for a moment wish to dispute the justice or necessity of the law that makes it possible for large estates to be sold up for trifling arrears of Government revenue, but what I do wish to point out is that it seems to zamíndárs a want of justice on the part of Government to reserve to itself this power of summary sale while it refuses any summary powers to the landlord for the collection of his rents from his raiyats.

The Government itself recognises the inutility of trusting to the Civil Courts only for the realisation of rents, by having peculiar laws of its own in its own estates or "Khas Mehals," and if necessary for Government, surely such rules are equally so for us. I do most earnestly hope that this matter will be seriously looked into before any final conclusion on it is arrived at, as it is one which gravely affects the majority of the Bíhár zamíndárs.

Chapter XVII.—Freedom of Contract.

I wish to enter my strong protest against the abolition of freedom of contract between zamíndárs and their raiyats and to the contemplated annulment of contract now existing, and entered into in confidence of the good faith of Government, by whom such contracts were specially legalised and thereby encouraged.

I would urge that no evidence has been shown of the alleged evils arising out of these contracts, or that zamíndárs have by an improper use of them injured an unsuspecting peasantry; and that until the most conclusive proof can be given that such evils have become common, no such violent breach of existing arrangement fairly arrived at by mutual consent and sanctioned by Government should be allowed.

The proposed legislation on this point seems to start with the assumption that all contracts between a zamíndár and raiyat must be prejudicial to the latter, an assumption utterly incorrect, as there are many cases in which a contract is directly to the advantage of the raiyat who benefits by complying with his landlord's wishes, to such contracts there could be no possible objection, and yet these also will now be barred.

Finally, I would desire to record that I object strongly to the conclusions of this Select Committee, because I am of opinion that in such a momentous question we have not had any sufficient data from which to form a fair judgment.

We should have had clear evidence given to us of the existence of those alleged causes, which not only necessitate so extreme a measure as a breach of Government guarantee and infringement of a proprietary right, but which call for a law avowedly so imperfect that the legal member of Government in introducing it has to admit that it is in itself likely to cause the extinction of the present class of cultivators for whose benefit it is specially passed; and to

create

create in a few years a new class of cultivators unprotected by any law, and to leave the then Government of India to plunge the country once more into agitation and trouble in attempting to remedy the evils created by this Bill.

I would urge that if a Bill is now necessary to define and regulate the relations of landlord and tenant, it should be conceived in such a spirit and so framed that, instead of creating future difficulties, it should set this subject at rest for ever.

I am also of opinion that it was impossible to give the proposed Bill proper consideration in Select Committee without evidence being taken on most of its points; and that this not having been done and proper statistical information not having been given to and tested by us, our deliberations were unsatisfactory, and that the results arrived at are based on very insufficient data.

1 April 1884. (signed) *Dárbhangá.*

TRANSLATION of the FIRMAN.

Seal.

Be it known to all the amils of the present and future, and to the jágírdárs, karorious officers and Nazims of Sooba Bíhár, that in accordance with the order of the Emperor who is universally obeyed, the long-standing zámíndárí of Pargana Dharmpur in Sirkar Monghyr and Dehat Pargana of Sirkar Tirhut, belonging to the said Sooba Bíhár, has been confirmed to Rája Madho Singh with appertaining rights, viz., inam rasooms, &c. It is necessary that the officers and karpardazes of the Nizamat should recognise the aforesaid Rája (whose zámíndárí having descended to him by succession is declared as such) to be the permanent zámíndár (subject to loyalty), keep him in possession of the zámíndárí rights, cause his all demands to be paid up, act according to his advice if the same be loyal and tending to benefit the raiyats. Further also, act in accordance with this Firman, which is high in dignity, they should strictly act up to the orders contained in the above Firman and refrain from calling upon the production of the renewed sanad annually.

Dated the 29th Shawal of the 42nd year of accession.

No. II.

THE BENGAL TENANCY BILL, 1884.

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SCHEDULE IV.—LIMITATION.

No. II.

BENGAL TENANCY BILL.

Explanation of abbreviations in margin.

D. means Mr. Field's Digest.

C.B., the Bill prepared by the Commission.

B.B. the Bill submitted by the Bengal Government with letter No. 849, dated 27th July 1881.

SECTION means the corresponding section of the Bill as introduced in March 1883.

A Bill to amend and consolidate certain Enactments relating to the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1.) This Act may be called the Bengal Tenancy Act, 1884. Short Title. Section 1 (1).

(2.) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local Gazette, appoint in this behalf. Commencement. Section 1 (2).

(3.) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local Gazette, extend the whole or any part of this Act to the Division of Orissa. Local Extent. [C B., s. 1. B. B., s. 1.] Section 1 (3).

2. (1.) The enactments specified in Schedule I. hereto annexed are repealed in the territories to which this Act extends by its own operation. Repeal. [C. B., s. 2. B. B., s. 2.] Section 2.

(2.) When this Act is extended to the Division of Orissa, such of those enactments as are in force in that Division, or, where a part only of this Act is so extended, so much of them as is inconsistent with that part, shall be repealed in that Division.

(3.) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(4.) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. In this Act, unless there is something repugnant in the subject or context:— Definitions. [D. § 1. C. B., s. 3. B. B., s. 3.] (Section 3 (I.)

(1.) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained

maintained under the law for the time being in force by the collector of a district :—

VI of 1876. (B. C.)

Provided that the registration of a tenure under Section 3 (2) (*c*) of the Land Registration Act, 1876, shall not constitute it an estate within the meaning of this definition.

[D. § 1. C. B. s. 3. B. B., s. 3.] Section 3 (2).

(2.) "Proprietor" means a person or a number of persons owning an estate.

Section 3 (8).

(3.) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

Section 3 (9).

(4.) "Landlord" means a person or a number of persons immediately under whom a tenant holds.

[D. § 1. C. B., s. 3. B. B. s. 3. *See* s. 227.] Section 3 (10).

(5.) "Rent" means whatever is payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant.

Section 3 (11).

(6.) "Pay," "payable," and "payment," used with reference to rent, include "deliver," "deliverable," and "delivery."

Section 3 (13).

(7.) "Holding" means a parcel or parcels of land held by a tenant of a landlord under one lease or one set of conditions.

Section 3 (14).

(8.) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysák, where the Faslí or Amlí year prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

[D. §. 20 and 37. C. B., ss. 6 and 16. B. B., ss. 6 and 15.] Section 3 (15).

(9.) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihár, and Orissa, made in the year 1793.

Section 3 (16).

(10.) "Transfer" includes sale, whether voluntary or in execution of a decree, and mortgage and gift.

Section 3 (17).

(11.) "Succession" includes both intestate and testamentary succession.

[C. B., s. 1. B. B., s. 3.] Section 3 (19).

(12.) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

Section 3 (20).

(13.) "Prescribed" means prescribed by the Local Government by notification in the official Gazette.

Section 3 (21).

(14.) "Collector" means the Collector of a District or any other officer appointed by the Local Government to discharge the functions of a Collector under this Act.

Section 3 (22).

(15.) "Revenue officer" in any provision of this Act means such officer as the Local Government may appoint to discharge the functions of a Revenue officer under that provision.

[D., § 26. C. B., ss. 14 and 15. B. B., s.s. 13 and 14.] Section 36.

(16.) "Patní tenure" means a tenure of the kind described in Schedule II. annexed to this Act, and includes the darpatní and other similar tenures referred to in that schedule.

CHAPTER II.

Classes of Tenants.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants, namely:—

(1.) Tenure-holders, including under-tenure-holders.

(2.) Raiyats, and

(3.) Under-

(3.) Under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats; and the following classes of raiyats, namely:— Section 3 (6).

(*a.*) Raiyats holding at fixed rates, which expression includes raiyats holding either at a fixed rent or at a fixed rate of rent.

(*b.*) Occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c.*) Non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy.

5. (1.) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder the right to collect rents, and includes also the successors in interest of persons who have acquired such a right and the persons who are to be deemed tenure-holders under section 37. Meaning of tenure-holder and raiyat. Section 3 (4).

(2.) "Raiyat" means primarily a person who has acquired land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and, subject to section 37, includes also the successors in interest of persons who have so acquired land. [D., § 1. C. B., s. 3. B. B., s. 3. ("raiyat" and "land.")] Section 3 (5).

(3.) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4.) In determining whether a tenant is a tenure-holder or a raiyat the Court shall have regard to—

(*a.*) Local custom;

(*b.*) The provisions of section 37, with respect to raiyats who sub-let more than half their holdings; and

(*c.*) The nature of the right of tenancy as originally acquired, that is to say, whether it was a right to collect rents or a right to cultivate land.

(5.) Where the area of a holding exceeds 100 standard bíghás, and the whole or part of it is sub-let, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

CHAPTER III.

TENURE HOLDERS.

Enhancement of Rent.

6. (1.) Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof— Tenure held since permanent settlement liable to enhancement only in certain cases. [D., s. 19. C. B., s. 7. B. B., s. 7.] Section 18.

(*a.*) That the landlord under whom it is held is entitled to enhance the rent thereof either by local custom, or by the conditions under which the tenure is held; or

(*b.*) That the tenure-holder, by receiving reductions of his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

(2.) A reduction of rent granted to a tenure-holder on account of diluvion or for land taken under the provisions of any enactment for the time being in force for the acquisition of land for public purposes or companies shall not be deemed a reduction within the meaning of this section.

7. (1.) Where the rent of a tenure holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity. Limits of enhancement of rent of tenures. [D., § 23. C. B., ss. 9 & 12. B. B., ss. 9 & 10.] Section 21.

(2.) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3.) In determining what is fair and equitable the Court shall not leave to the tenure-holder as profit less than 10 per centum of the balance which

remains after deducting from the gross rents payable to him the expenses of collecting the rents, and shall have regard to—

(*a.*) The circumstances under which the tenure was created; for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest;

(*b.*) The improvement, if any, made by the tenure-holder or his predecessors in interest; and

(*c.*) The cost and risks of collection.

(4.) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

Enhanced rent not to be more than double the previous rent. [C. B., s. 10 (*a*). B.B., s. 11 (*a*)]. Section 22.

8. Where the rent of a tenure-holder is liable to enhancement, the enhanced rent fixed under the last foregoing section shall not be more than double the rent previously payable.

Power to order gradual enhancement. [C. B., s. 10 (*a*). B. B., s. 11 (*b*)]. Section 23.

9. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Rent once enhanced may not be altered for ten years. [C. B., s. 10 (*b*). B.B., s. 11 (*c*)]. Section 24.

10. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the 10 years next following the date on which it has been so enhanced.

Other Incidents of Tenures.

Transfer and transmission of permanent tenures. [C. B., s. 13. B. B., ss. 13 & 17.] Section 25.

11. Every permanent tenure shall, subject to the provisions of this Act in respect of registration, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

Permanent tenure-holder not liable to ejectment. Section 26.

12. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

Patní Tenures.

Power of patnídar to sub-let. [D., § 26. C. B., s. 14, B. B, s. 13.] Section 37 (2).

13. The holder of a patní tenure may, subject to the provisions of this Act, let the land comprised in his tenure or any part thereof.

Right of landlord of patni tenure to demand security from transferees. [D., § 27. C. B., s. 53. (*a*). B. B., s. 45 (*a*).] Section 38.

14. (1.) When a patní tenure is transferred, whether voluntarily, or by sale in execution of a decree, or by summary sale under this Act, the landlord may require the transferee to furnish substantial security to the amount of one half-year's rent of the tenure, for the payment of the rent and the fulfilment of the conditions of the tenure.

[D., § 29. C. B., s. 53, (*b*). B. B., s. 45 (*b*).] Section 40 (1).

(2.) In the case of a transfer by sale in execution of a decree, or by summary sale, if security is demanded by the landlord from the purchaser under this section and is not furnished within one month from the date on which it is so demanded, the landlord may attach and hold possession of the tenure to the exclusion of the transferee until the security is furnished.

Section 40 (2).

(3.) While an attachment under this section continues, the landlord may collect the rents from the under tenure-holders or raiyats, and, after deducting therefrom the cost of the attachment, the expenses of collection and the rent due to himself, he shall hold the balance in trust for the purchaser.

Section 40 (3).

(4.) If the rents so collected are not sufficient to discharge the cost of the attachment, the expenses of collection, and the rent due to the landlord, the purchaser shall be liable for the deficiency, and the landlord may proceed against him for the recovery of the same.

[D., § 28. C. B., s. 53 (*b.*) B. B., s. 45 (*c*).] Section 41 (1).

(5.) If the security tendered under this section by any transferee is rejected by the landlord, the transferee may, within three months from the date of the rejection, apply to the Civil Court for an order directing the landlord to receive the

the security, and the Court, if satisfied of the sufficiency of the security tendered, may make such order, or, if not so satisfied, may make an order rejecting the application.

(6.) No appeal shall lie from any order under this Section. Section 41 (2).

Registration.

15. (1.) When a transfer of a permanent tenure (other than a transfer by sale in execution of a decree or by summary sale under this Act) or a succession to such a tenure, takes place, the landlord shall, subject, in the case of a patní tenure, to the provisions of the last foregoing section, register the same on the joint application of the transferor and transferee, or on the application of the person succeeding, as the case may be, and on payment by the applicant of the fee next hereinafter prescribed:

Provided that a landlord may, if he thinks fit, refuse to register a transfer of a tenure if any arrear of rent is due thereon.

Registration of voluntary transfers and successions.
[D., § 25. C. B., s. 46. B. B., s. 37.]
Section 27 (1).

(2.) The fee payable on an application under this section shall be as follows, namely:

(*a.*) When rent is payable in respect of the tenure a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and,

(*b.*) When rent is not payable in respect of the tenure, a fee of two rupees.

[D., s. 27. C. B., ss. 47, 49. B. B., s.s. 39, 41.]
Section 27 (2).

(3.) If a landlord refuses to comply with any application under this section, he shall deliver to the applicant a statement in writing of the reasons for his refusal, and if he fails to do so the applicant may institute a suit to recover from him such sum by way of penalty not exceeding one hundred rupees as the Court thinks fit.

Section 27 (3).

16. (1.) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay into Court the registration fee prescribed by the last foregoing section, and such further fee for service of notice of the sale on the landlord as may be prescribed by the rules under section 22.

Registration of transfer by sale in execution of decree other than decree for rent.
[C. B., ss. 47, 48 (*c*). B. B., ss. 39, 40 (*c*).]
Section 29 (1).
XIV. of 1882.

(2.) When the sale has been confirmed, the Court shall forthwith cause to be served on the landlord a notice of the sale, requiring him to register the same, and informing him that the registration-fee has been received and will be paid to him on demand when the registration has been effected; and the landlord shall, in the absence of sufficient cause, forthwith comply with the requisition.

Section 29 (2).

17. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, or by summary sale under this Act, the landlord shall register the transfer without any application or requisition being made to him in this behalf, and without the payment of any fee.

Registration of transfer by sale in execution of decree for rent or by summary sale.
Section 30.

18. (1.) When a transfer of a permanent tenure (not being a transfer by sale in execution of a decree for arrears of rent or by summary sale under this Act) has taken place, the landlord may, until the transfer has been registered under this chapter, hold the transferor and transferee jointly and severally liable for arrears of rent accruing after the transfer.

Effect of omission to register.
[D. s. 10. C. B., ss. 46. 48 (*a.*) 49. B. B., ss. 37, 40 (*a.*) and 41.]
Section 31.

(2.) A person becoming entitled to a permanent tenure by transfer or succession shall not be entitled to recover by suit, distraint, or other proceeding, any rent payable to him as the holder of the tenure, until the transfer or succession has been registered under this chapter, or a notice thereof has been served on the landlord in manner directed by rules under Section 22.

19. (1.) If a landlord refuses or neglects for a period of one month to register a transfer or succession which he is bound to register under the foregoing sections, the transferor or transferee, or, as the case may be, the person succeeding, may apply to the Civil Court to compel such registration.

Application to court to compel landlord to register.
[C. B., s. 35. B. B., s. 44.
Section 32 (1).

(2.) The Court thereupon may issue a notice to the landlord, and, when the application is made by one party to a transfer, also to the other party or parties to the transfer, requiring him or them, as the case may be, to show cause, at a time and place therein specified, why the transfer or succession should not be registered.

Section (32) 2.

Section 32 (3).

(3.) If sufficient cause as aforesaid is not so shown, the Court may make an order directing the landlord to register the transfer or succession, and the making of such an order shall have the same effect as if the transfer or succession had been registered.

(4.) If sufficient cause as aforesaid is shown, the Court may refuse to make an order, or may make such order as in its opinion will meet the circumstances of the case.

Application by landlord to compel registration.

[C. B., ss. 50 and 51 B. B., ss. 42 and 43.] Section 33 (1).

20. (1.) When a transfer (other than a transfer by sale in execution of a decree or by summary sale under this Act) or a succession, registrable under the foregoing sections, has taken place, and no application is made for its registration within the six months following the date on which it has taken place, the landlord may apply to the Civil Court to authorize the registration of the transfer or succession and to compel the parties to the transfer, or the person succeeding, as the case may be, to pay the fee mentioned in section 15.

Section 33 (2).

(2.) The Court may thereupon issue a notice, calling on the parties to the transfer, or the person succeeding, as the case may be, to show cause, at a time and place specified in the notice, why the registration should not be made and why they or he should not pay the fee.

Section 33 (3).

(3.) If sufficient cause as aforesaid is not so shown, the Court may make an order authorising the landlord to register the transfer or succession, and directing the transferee, or the person succeeding, as the case may be, to pay the fee. The making of such an order shall have the same effect as if the transfer or succession had been registered, and the order so made shall, so far as it directs the recovery of the fee, have the force of a decree in a suit.

(4.) If sufficient cause as aforesaid is so shown, the Court may refuse to make an order, or may make such order as in its opinion will meet the circumstances of the case.

Landlord to give copies of entries in the register.

[C. B., s. 54. B. B., s. 46.] Section 34.

21. When a transfer of, or a succession to, a tenure has been registered under the foregoing sections, every person to or from whom the tenure or any share thereof is transferred, or (as the case may be) every person succeeding to the tenure, shall be entitled to receive from the landlord as many copies as he may from time to time demand of the entry in the register relating to the tenure, certified by the landlord as a true copy: provided that for every copy so received he shall pay to the landlord such fee, not less than *one anna* or more than *one rupee*, as the Local Government may from time to time fix in this behalf.

Power to make rules regarding registration.

[C. B., s. 45. B. B., s. 46.] Section 35 (1).

22. (1.) The Local Government may, from time to time, by rules consistent with this Act, and published in the Official Gazette, prescribe forms for the registers to be maintained under the foregoing sections, and generally the procedure to be followed in regard to registration.

Section 35 (2).

(2.) In making any rule under sub-section (1) the Local Government may provide that any breach thereof shall be punishable with fine which may extend to 50 rupees.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

23. A raiyat holding at a fixed rent or rate of rent—

(*a*.) Shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenure-holder, and

C. B., s. 13. [B. B., ss. 12 and 17.] Section 26.

(*b*.) Shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

24. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land.

Continuance of existing occupancy-rights. [B. B., s. 19 (1) and Expl. IV. (*e*) proviso. Section 44.

25. (1.) Every settled raiyat of a village or estate shall have a right of occupancy in all land held by him as a raiyat in that village or estate.

Several raiyats to have occupancy-rights. Section 47.

(2.) Every person who, being a settled raiyat of a village or estate, held land as a raiyat in that village or estate at any time between the second day of March 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force.

Section 47.

26. (1.) Every person who for a period of twelve years whether wholly or partly before or after the commencement of this Act has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate.

Definition of settled raiyat. Section 45 (1).

(2.) If, in any proceeding under this Act, it is proved or admitted that a person holds land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years held the land or some part of it as a raiyat.

(3.) A person shall be deemed for the purposes of this section to have held land continuously in a village or estate, notwithstanding that the particular land held by him has been different at different times.

Section 45 (1).

(4.) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

Section 45 (2).

(5.) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

Section 45 (3).

(6.) A person shall continue to be a settled raiyat of a village or estate as long as he hold any land as a raiyat in that village or estate and for one year thereafter.

Section 46.

(7.) If a raiyat recovers possession of land under Section 96, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

27. For the purpose of the foregoing sections of this chapter:—

Definition of village and estate. [B. B., s. 19. Expl. II.] Section 43.

(*a.*) Village means an area included in a village map of the revenue survey within the same exterior boundary, including such outlying portions (if any) as appear from the map to belong to the village, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(*b.*) Where two or more estates have been created by one or more partitions taking place, whether before or after the commencement of this Act, but since *the first day of January* 1853, the area comprised in the parent estate of which they would have formed part if no such partition had taken place shall be deemed to be a single estate.

28. If the landlord of a raiyat having a right of occupancy acquires, by purchase or otherwise, the interest of the raiyat, the occupancy-right shall cease to exist, but nothing in this section shall prejudicially affect the rights of any third person.

Effect of acquisition of occupancy-right by landlord. Section 56.

 29. (1.) A person

Special provisions as to joint owners and farmers.

29. (1.) A person holding land as a raiyat shall not be prevented from acquiring an occupancy-right in the land by reason only that he is jointly interested in the land as proprietor or tenure-holder.

[D., § 40, Expls. I. and V. C. B., s. 19, Expl. IV. B. B., s. 19, Expl. IV. (*d*).]
Section 47, proviso.

(2.) A person holding as an ijárádár or farmer of rents shall not by such holding acquire a right of occupancy in the land, but if a person acquires a right of occupancy in land he shall not lose it by subsequently holding the land in farm.

Saving as to khámár land.

[D., § 40, Expl. V. C. B., s. 19, Expl. 3 (*d*), Expl. (4) (*g*), B. B., s. 19. Expl. III. (*b*.) Expl. IV. (*f*).]
Section 49.

30. Nothing in this chapter shall confer a right of occupancy in a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Bihár as zírat, nij, sír or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

Incidents of occupancy-right.

31. Where a raiyat has a right of occupancy in respect of any land, the following provisions shall apply, namely:—

[B. B., s. 69.]
Section 50, cl. (*a*).

(*a*.) He may use the land in any manner which does not render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

[C. B. s. 77, B. B., s. 69.]
Section 50, cl. (*b*).

(*b*.) He may make improvements on the land as by this Act provided.

[D., § 42, B. B, s. 21. (*d*).]
Section 50, cl. *c*.

(*c*.) He shall pay rent at fair and equitable rates.

[C. B., s. 20 (*e*). B. B., ss. 21 (*e*), 31, 69 (*a*).]
Section 50, cl. (*d*).

(*d*.) He shall not be ejected by his landlord from the land, except in execution of a decree for ejectment passed on the ground—

(*i*.) That he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(*ii*.) That he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

(*e*.) He may surrender his holding in accordance with this Act.

[C. B. s. 20 (*a*), (*b*) and (*d*). B. B., s. 21 (*a*) and (*b*).]
Section 50, cl. (*f*).

(*f*.) His right of occupancy in the land shall, subject to the rights reserved to the landlord by this Act, be capable of being transferred and bequeathed by will in the same manner and to the same extent as other immoveable property.

[D., § 40, note 7. B. B., s. 71.]
Section 50, cl. (*e*).

(*g*.) He may, subject to the provisions of this Act, sub-let his land or any part thereof.

[D., § 41, note 9. C. B., s. 20 (*c*). B. B. s. 21. (*c*).]
Section 50, cl. (*g*).

(*h*.) His right of occupancy in the land shall, if he dies intestate in respect of it, descend in the same manner as any other immoveable property: provided that in any case in which, under the law of inheritance to which he is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

Restrictions on Transfer.

Restrictions on transfer.

32. (1.) The right of a raiyat to sell his occupancy-right shall be subject to a right of pre-emption on the part of his landlord.

Landlord's right of pre-emption on voluntary sale of occupancy-right.
Section 51 (1).

(2.) For the purpose of enabling the landlord to exercise his right of pre-emption, the raiyat shall, if he intends to sell his occupancy-right to any person other than the landlord, file in the office of such court or officer as the Local Government may appoint in this behalf, for service on the landlord, a written notice of his intention, stating the person to whom he intends to sell the right, the terms on which he intends to sell, and the incumbrances, if any, to which the right is subject, and shall defer proceeding with the sale until the expiration of six weeks from the date on which he files the notice.

Section 51 (2).

(3.) The court or officer in whose office the notice is filed shall forthwith cause it to be served on the landlord in such manner as the Local Government may from time to time by rule direct.

Section 51 (3).

(4.) The landlord may, within the period of six weeks from the date of the notice being filed, claim to purchase the occupancy-right from the raiyat at such

such price as may be agreed on between them, or, if they cannot agree on a price, at such price as may be fixed by the Civil Court on an application made to it in this behalf by the landlord within the said period of six weeks; and if the landlord so claims and, within one month from the date on which a price is agreed on or fixed by the court, tenders that price to the raiyat, the raiyat shall either abstain from selling the land, or sell it to the landlord at that price.

(5.) If a raiyat sells his occupancy right to any person other than the landlord without having filed the notice required by this section, or within the period of six weeks from the date of the notice being filed, the sale shall be void as against the landlord. Section 51 (4).

(6.) The Local Government may, from time to time, by notification in the Official Gazette, make rules requiring a Civil Court to associate with itself for the purpose of fixing the price of an occupancy-right under this section such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

33. Where an occupancy-right is sold in execution of a decree, and two or more persons, one of whom is the landlord, respectively advance the same sum at any bidding, the bidding shall be deemed to be the bidding of the landlord. Landlord's right of pre-emption on sale in execution. [Act XIV. of 1882, s. 310.]

34. (1.) Where an occupancy-right has been mortgaged by the raiyat and an order absolute for foreclosure is applied for in respect of it under section 87 of the Transfer of Property Act, 1882, the Court shall, if it proposes to make the order, cause a notice of the application to be served on the landlord, and shall defer making the order for a period of one month from the service of the notice. Landlord's right to take the place of mortgagee on foreclosure. Section 53 (1). IV. of 1882. Section 52.

(2.) If the landlord within the said period of one month pays into Court the amount requisite to redeem the mortgage, the Court shall pay that amount to the plaintiff in the suit, declare the landlord entitled to stand in the place of the plaintiff, and pass an order absolute for foreclosure in favour of the landlord. Section 53 (2).

(3.) An order absolute passed under sub-section (2) shall have the same effect as if the landlord had been the mortgagee and the plaintiff in the suit. Section 53 (3).

35. (1.) A gift of an occupancy-right in land shall not be valid against the landlord unless it is made by a registered instrument. Restrictions on gifts of occupancy-right. Section 54 (1).

(2.) The registering officer shall not register any such instrument except on payment of the prescribed fee for service on the landlord of notice of the registration.

(3.) When any such gift has been registered, the registering officer shall forthwith serve notice of the registration on the landlord. Section 54 (2).

(4.) In the case of gifts made by Muhammadans, nothing in this section shall apply to a gift to a person within the prohibited degrees.

36. For the purpose of the last four foregoing sections the term landlord shall mean exclusively either,— Meaning of landlord for purposes of foregoing sections.

(*a.*) A proprietor under whom immediately the land is held by the raiyat;

(*b.*) A permanent tenure-holder under whom immediately the land is held by the raiyat; or

(*c.*) Any other tenure-holder under whom immediately the land is held by the raiyat, provided that such tenure-holder holds immediately under the proprietor or a permanent tenure-holder and is authorised in writing by the proprietor or permanent tenure-holder, as the case may be, to exercise the rights of a landlord for the purposes of the said sections.

Restrictions on Sub-letting.

37. If the portion of his holding sub-let by an occupancy raiyat exceeds more than half his holding, he shall, on being registered in a public register as a tenure, Conversion of sub-letting occupancy-raiyats into tenure-holders.

a tenure-holder under any Act which may be passed for the registration of tenure-holders, be deemed to have become a tenure-holder within the meaning of this Act.

Provided as follows :—

(*a.*) Nothing in this section shall apply to any person who is disabled from cultivation by age, sex, disease, accident or temporary absence from home on military or domestic service, or a pilgrimage, and who sub-lets his holding or any part thereof for a term not exceeding the duration of his disability.

(*b.*) If a person is converted into a tenure-holder by virtue of this section his rent shall be liable to enhancement on the same terms and subject to the same conditions as if he were an occupancy-raiyat.

Explanation.—A person who has been converted into a tenure-holder by virtue of this section does not by reason of the portion of his holding sub-let ceasing to be more than one-half the holding become again converted into a raiyat.

Restrictions on term of sub-lease.

38. If an occupancy-raiyat sub-lets his holding or any part thereof, the sub-lease shall not be valid for a term exceeding seven years.

Provided as follows :—

(*a.*) Where a raiyat is disabled from cultivation by age, sex, disease, accident or temporary absence from his home on military or domestic service, or a pilgrimage, nothing in this section shall prevent him or be deemed to have prevented him from sub-letting his holding or any part thereof for a term not exceeding the duration of his disability.

(*b.*) In the case of a sub-lease granted before the commencement of this Act, the term of *seven* years shall, for the purposes of this section, be computed from the commencement of this Act.

Enhancement of Rent.

Enhancement of rent.

Presumption as to fair and equitable rent.

[D., § 42, B. B. s. 21 (*d*).]

Section 58.

39. The rent for the time being payable by an occupancy raiyat shall be presumed to be fair and equitable until the contrary is proved.

Restriction on enhancement of money rents.

[B. B., s. 21 (*d*).]

Section 60.

40. Where an occupancy raiyat pays his rent in money, his rent shall not be enhanced, except as provided by this Act.

Enhancement of rent by registered contract.

Section 59 (1).

Section 59 (2).

41. (1.) The money rent of an occupancy-raiyat may be enhanced by registered contract, subject to the following conditions :—

(*a.*) The rent must not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the raiyat.

(*b.*) The contract must fix the rent for a term of at least seven years.

(*c.*) If the enhanced rent exceeds, by more than two annas in the rupee, the previous rent, the contract must fix the rent for a term of at least fifteen years.

Section 59 (2).

(2.) The registering officer shall, before registering a contract under this section, ascertain that the contract is in accordance with the provisions of this Act, and that the raiyat is competent and willing to enter into it and understands its nature.

Enhancement on re-letting.

Section 61.

42. (1.) Where land which has been previously held by a tenant at a money rent is let to a settled raiyat of the village or estate in which it is situate, the raiyat shall not be bound to pay for it any rent higher than that which was paid for it by the previous tenant, except in pursuance of a registered contract for enhancement of the rent.

(2.) The provisions of the last foregoing section shall apply to every such contract.

43. The

43. The landlord of a holding held at a money rent by an occupancy raiyat, may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely :— Enhancement of rent by suit. [D., § 43 (1) and (2); C. B., s. 22 (1), (3) and (4). B. B., s. 23 (1), (3) and (4).] Section 74.

(*a.*) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy raiyats for land of a similar description, and with similar advantages in the vicinity.

(*b.*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c.*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d.*) That the productive powers of the land held by the raiyat have been increased by fluvial action.

44. Where an enhancement is claimed on the ground that the rent paid is below the prevailing rate :— Rules as to enhancement on ground of prevailing rate.

(*a.*) The enhanced rent shall not exceed the previous rent by more than eight annas in the rupee.

(*b.*) If in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV. of the Code of Civil Procedure by such revenue officer as the Local Government may authorise by rule in that behalf. XIV. of 1882. Act XII. of 1881, s. 20.

(*c.*) In determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom.

(*d.*) In ascertaining the prevailing rate of rent the amount of any enhancement authorised on account of a landlord's improvement shall not be taken into consideration.

45. Where an enhancement is claimed on the ground of rise in prices : — Rules as to enhancement on ground of rise in prices.

(*a.*) The Court shall have regard to the lists of prices periodically published under the authority of the Local Government, and shall compare the average prices during the quinquennial period immediately preceding the institution of the suit with the average prices during such other quinquennial period as it may appear equitable and practicable to take for comparison.

(*b.*) The Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

(*c.*) Subject as aforesaid, and subject also to section 48, the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last quinquennial period bear to the average prices during the previous quinquennial period taken for purposes of comparison.

46. Where an enhancement is claimed on the ground of a landlord's improvement : — Rules as to enhancement on ground of landlord's improvement.

(*a.*) The Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act.

(*b.*) In determining the amount of enhancement the Court shall have regard to—

(i.) The increase in the productive power of the land caused or likely to be caused by the improvement;

(ii.) The cost of the improvement;

 (iii.) The

(iii.) The cost of the cultivation required for utilizing the improvement; and

(iv.) The existing rent and the ability of the land to bear a higher rent.

(*c.*) The court may make its decree conditional and subject to review and reconsideration in the event of the improvement not producing the estimated effect within a specified time.

Rules as to enhancement on ground of increase of productive powers due to fluvial action.

47. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(*a.*) The court shall not take into account any increase which is merely temporary or casual.

(*b.*) The enhanced rent shall not exceed the previous rent by more than four annas in the rupee.

(*c.*) The court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Enhancement to be fair and equitable.

48. The court shall not in any case decree any enhancement which appears under the circumstances of the case to be unfair or inequitable.

Power to order progressive enhancement.
[C. B., s. 23. (*d*). B. B. s. 24. (*d*).
Section 77.

49. If the court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

Limitation of right to bring successive enhancement-suits.
[B. B., 143.]
Section 78.

50. (1.) A suit instituted for the enhancement of the rent of a holding on the ground that the rent paid is below the prevailing rate, or on the ground of an increase in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March 1883, or if within the said period of fifteen years the rent has been commuted under section 53, or a decree has been passed under this Act, or any enactment repealed by this Act, enhancing the rent on either of the grounds aforesaid or any ground corresponding thereto, or dismissing the suit on the merits.

XIV. of 1882.

(2.) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

Reduction of Rent.

Reduction of rent.
[D., 47. C. B., s. 25 (2) and (3). B. B. s. 25 (2) & (3).]
Section 79.

51 (1). An occupancy raiyat holding at a money rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, namely—

(*a.*) On the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other like calamity; or,

(*b.*) On the ground that there has been a fall in the average prices of staple food crops in the locality or at the usual markets.

(2.) In any suit instituted under this section the Court may direct such reduction of the rent as it thinks fair and equitable.

Price Lists.

Price lists of staple crops.
[C. B., 122 B. B. s. 145].
Section 83 (1).

52. (1.) The collector of every district shall prepare, at such time or times of the year as the local government fixes in this behalf, lists of the market-prices at harvest-time of staple food crops grown in such local areas as the local government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2.) The

(2.) The collector may, if so directed by the local government, prepare for any local area like price lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue, for approval or revision.

(3.) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette. Section 83 (2).

(4.) Any such price list so published shall, in any proceedings under this chapter, be conclusive evidence of the prices prevailing in the local area at the time to which it relates. Section 83 (3).

(5.) The collector shall, fifteen days before submitting a price list to the Board of Revenue under this section, publish it within the local area to which it relates in the manner in which notices are usually published, and if any landlord or tenant of land within the local area within the said period of fifteen days presents to him in writing any objection to the list he shall submit the same to the Board of Revenue with the list.

Commutation.

53. (1.) Where an occupancy raiyat pays rent for a holding in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money rent. Commutation of rent payable in kind. [C. B., s. 86. B. B. ss. 90 and 92.] Section 82 (1).

(2.) The application may be made to the collector, or sub-divisional officer, or to an officer making a settlement of rents under Chapter X., or to any other officer specially authorised in this behalf by the Local Government.

(3.) On the receipt of the application the officer may determine the sum to be paid as money-rent, and shall order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4.) In making the determination the officer shall have regard to:— Section 82 (2).

(*a.*) The average money rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity; and

(*b.*) The average value of the rent actually received by the landlord during the preceding 10 years.

(5.) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as other orders made by revenue officers.

(6.) If the application is opposed, the officer may, for reasons recorded in writing, refuse to grant it.

Power to make Rules.

54. The Local Government may, from time to time, subject to the control of the Governor General in Council, make rules:— Power to make rules. [C. B., ss. 120. 122 and 23 (c), B. B. ss. 134, 145 and 24 (c).] Section 84.

(*a.*) For the guidance of officers engaged in the preparation of price lists under section 52;

(*b.*) Determining what food crops shall be deemed to be staple crops for the purposes of this chapter in any local area; and

(*c.*) For the guidance of officers registering contracts under section 41 and section 42.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

55. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats. Application of chapter. Section 88.

 56. When

Initial rent of non-occupancy-raiyat. Section 89.

56. When non occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Conditions of enhancement of rent.

57. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 60.

Grounds on which non-occupancy raiyat may be ejected. [C. B., s. 79 (5.)] B. B. ss. 26, 72 (5).] Section 90.

58. A non-occupancy raiyat shall be liable to ejectment on one or more of the following grounds, and not otherwise:—

(*a*.) On the ground that he has failed to pay an arrear of rent.

(*b*.) On the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

(*c*.) Where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired.

(*d*.) On the ground that he has refused to agree to pay a fair and equitable rent determined under Section 60, or that the term for which he is entitled to hold at such a rent has expired.

Conditions of ejectment on ground of expiration of lease. Section 91.

59. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

Conditions of ejectment on ground of refusal to agree to enhancement.

60. (1.) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat, unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(2.) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such court or officer as the Local Government appoints in this behalf for service on the raiyat. The court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

Sections 92 (1) and 93 (1).

(3.) If a raiyat on whom an agreement has been served under Sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4.) When an agreement has been executed and filed by a raiyat under Sub-section (3), the court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

Sections (92) (2) and 93 (2).

(5.) If the raiyat does not execute the agreement and file it under Sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6.) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

Section 93 (2).

(7.) If the raiyat agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(8.) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9.) In determining what rent is fair and equitable, the Court shall have regard to the average rent payable by raiyats for land of a similar description, and with like advantages in the vicinity, but shall not allow any enhancement exceeding eight annas per rupee of the previous rent.

10. A decree

(10.) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed. Section 92 (2).

61. Where a raiyat has been in occupation of land, and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation. Explanation of "admitted to occupation."

CHAPTER VII.

UNDER-RAIYATS.

62. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following per-centage of the same, namely :— Limit of rent recoverable from under-raiyats.

(*a*.) When the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent. ; and

(*b*.) In any other case—25 per cent.

63. An under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year, and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year. Restriction on ejectment of under-raiyats.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and Presumptions as to Amount of Rent.

64. (1.) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the holding. Rules and presumptions as to fixity of rent. [D., §§ 20 & 37. C. B., ss. 6 & 16. B. B., ss. 6 & 15.]

(2.) If it is proved in any suit or other proceeding under this Act that a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the 20 years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement : Section 14. [D., §§ 21 & 38. C. B., ss. 6 & 17. B. B., ss. 6 & 16.] Section 15.

Provided that if it is required by, or under any enactment that in any local area, tenancies, or any classes of tenancies at fixed rents or rates of rent shall be registered as such on or before a date specified by or under the enactment, the foregoing presumption shall not, after that date, apply to any tenancy, or, as the case may be, to any tenancy of that class in that local area which has not been so registered.

(3.) When a raiyat has paid as rent a fixed share or the value of a fixed share of the produce of the land, the rent or rate of rent shall not be deemed to have been changed within the meaning of this section merely by reason of the amount paid having varied from year to year, or by reason of the rent having been commuted with the consent of both the raiyat and his landlord to a fixed money rent. [D., § 38. C. B., s. 16. Expl. I. B. B., s. 15. Expl. I.] Section 16.

(4.) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding. [D. § 37. C. B., s. 16. Expl, II. B. B. s. 15. Expl. II.] Section 17.

(5.) Nothing in this section shall apply where the land is held for a term of years, or the tenancy thereof is determinable at the will of the landlord. [D., § 20. C. B. s. 6. B. B., s. 6.] Section 19.

65. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year. Presumption as to amount of rent and conditions of holding. Section 120.

Alteration of Rent on alteration of Area.

Alteration of rent in respect of alteration in area.
[D., §§ 19. 2. 43 (3) & 47.
C. B., ss. 8. 18. 22 (2) & 25 (1).
B. B., ss. 8. 18, 23 (2) 25 (1).]
Section 96.

66. (1.) Every tenant shall—

(*a.*) Be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him; and

(*b.*) Be entitled to a reduction of rent in respect of any diminution of the area of his holding caused by diluvion or otherwise, unless it is proved that the land lost was added to the area of the holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2.) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description, and with similar advantages in the vicinity; and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure.

(3.) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the holding.

Payment of Rent.

Instalments of rent. Payment of rent.
[C. B., s. 55 (*a*).
B. B., s. 47 (*a*).]
Section 97.

67. (1.) A money-rent payable by a tenure-holder shall be paid in such instalments and on such dates as may have been agreed upon between the tenure-holder and his landlord; in the absence of agreement, in such instalments and on such dates as may be customary; and in the absence of any agreement or custom, in such instalments and on such dates as the Local Government may fix by rule for any local area.

[C. B., s. 53 (*b*).
B. B., s. (*b*).]
Section 98.

(2.) A money-rent payable by a raiyat or under-raiyat shall be paid in such instalments, representing respectively such proportions of the yearly rent, and on such dates, not being more than four in each year, as the Local Government may fix by rule for any local area, and, subject to any such rules, as may be fixed by agreement, or in the absence of agreement, by custom.

[B. B., s. 47 (*b*).]
Section 99 (1).

(3.) In making rules under this section the Local Government shall take into consideration the prevailing customs, the time of harvest, and the time at which land revenue is payable.

Section 99 (2).

(4.) Every rule made under this section shall be published in manner prescribed not less than three months before the commencement of the agricultural year in which it is to take effect.

Time and place for payment of rent.

68. (1.) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

(2.) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may make rules authorising a tenant to pay his rent by postal money order.

[D. s. 101.
C. B., s. 56.
B. B., s. 48.]
Section 3 (12).

(3.) Any instalment, or part of an instalment, of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

Appropriation of payments.

69. (1.) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2.) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Receipts and Accounts.

70. (1.) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

Tenant making payment to his landlord entitled to a receipt. Receipts and accounts [D., § 61. C. B., s. 57. B B. s. 49. (*a*) and (*b*).] Section 100.

(2.) The landlord shall prepare and retain a counterfoil of the receipt.

(3.) The receipt and counterfoil shall specify the several particulars shown in the form of receipt given in Schedule III. to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(4.) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

71. (1.) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge, signed by the landlord.

Tenant entitled to full discharge or statement of account at close of year. [C. B., s, 51 (*b*). B. B., s. 49 (*c*).] Section 101.

(2.) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year, a statement of account specifying the several particulars shown in the form of account given in Schedule III. to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3.) The landlord shall prepare and retain a copy of the statement containing similar particulars.

72. (1.) If a landlord refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by Section 70 for any rent paid by the tenant, the tenant may, within six months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

Penalties and fine for withholding receipts and statements of accounts and failing to keep counterparts. [D. s. 65. C. B. s. 57 (*d*). B. B. ss. 49 (*d*) & 94.] Section 102.

(2.) If a landlord refuses or neglects to deliver to a tenant demanding the same the receipt in full discharge or the statement of account for any year prescribed in Section 71, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3.) If a landlord fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to 50 rupees.

Deposit of Rent.

73. (1.) In any of the following cases, namely:—

(*a*.) When a tenant tenders money on account of rent, and the landlord refuses to receive it, or refuses to grant a receipt for it;

(*b*.) When a tenant bound to pay money on account of rent has reason to believe that owing to a dispute or ill-feeling the person to whom his rent is payable will not be willing to receive it, and to grant him a receipt for it;

(*c*.) When the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent in their behalf; or

(*d*.) When the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent;

Application to deposit rent in public office. [D., § 99. C. B. ss. 58 & 59. B. B., ss. 50 & 51.] Section 103.

the tenant may present to such officer as the Local Government from time to time appoints in this behalf for the local area in which the holding is situate, an application in writing for permission to deposit in his office the full amount of the money then due.

(2.) The application shall contain a statement of the grounds on which it is made; shall, in case (*d.*), state the name of the person to whom the rent was last paid, and of the person or persons now claiming it; shall be signed by the tenant, or, where he is not personally cognisant of the facts of the case, by some person so cognisant; and shall be accompanied by a fee of such amount, not less than eight annas, as the Local Government from time to time by rule directs.

Receipt granted by public officer for rent deposited to be a valid acquittance.
[D., §§ 99 & 100.
C. B., s. 60.
B. B. s. 52.]
Section 104.

74. (1.) If it appears to the officer to whom such application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, he shall receive the rent and give a receipt for it under his official seal.

(2.) The officer may, if he thinks fit, before receiving the rent, examine the person who has signed the statement required under the last foregoing section.

(3.) A receipt given under this section shall operate as an acquittance for the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if the rent had been received—

In case (*a.*) of the last foregoing section, by the person to whom the rent was tendered;

In case (*b.*) of that section, by the person specified in the application as the person to whom the rent was payable;

In case (*c.*) of that section by the co-sharers jointly; and

In case (*d.*) of that section by the person entitled to the rent.

Notification of receipt of deposit.
[D., § 100.
C. B., s. 61 (*a*).
B. B., s. 53 (*a*).]
Section 105.

75. (1.) The officer receiving the deposit shall forthwith cause to be affixed in a conspicuous place in his office a notification of the receipt thereof, containing a statement of all material particulars.

(2.) If the amount of the deposit is not paid away under the next following section, within the period of 15 days next following the date on which the notification is so affixed, the officer shall cause a notice of the receipt of the deposit to be served, free of charge, on every person who he has reason to believe claims or is entitled to the deposit.

Payment or refund of deposit.
[D., §. 100.
C. B., s. 61, cls (*b*) & (*c*).
B. B. s. 53, cls. (*b*) & (*c*).
Sections 106 and 107.

76. (1.) The officer may pay the amount of the deposit to any person appearing to him to be entitled to the same, or may, if he thinks fit, retain the amount pending the decision of a civil court as to the person so entitled.

(2.) The payment may, if the Local Government so direct, be made by postal money order.

(3.) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a civil Court to the contrary, be repaid to the depositor upon his application, and on his returning the receipt given by the officer with whom the rent was deposited.

(4.) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by an officer receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Arrears of Rent.

Rent first charge on transferable holding.
Arrears of rent.
[C. B. s. 64.
B. B., s. 56.]
Section 125.

77. (1.) The rent of every transferable holding shall be a first charge on the holding.

(2.) If the right, title, and interest of the tenant is brought to sale in execution of a money decree obtained by a person other than the landlord, the landlord shall be entitled to be first paid out of the sale proceeds any rent which may be due to him by the tenant, but this right shall be without prejudice to the landlord's charge under sub-section (1).

Ejectment from non-transferable holding for arrears.

78. (1.) When an arrear of rent remains due in respect of a non-transferable holding at the end of the Bengali year where that year prevails, or at the end of the

the month of Jeyt where the Fusli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant. [D. §§ 12 (5) & 93. C. B. ss. 79 (5) & 152 B. B. ss. 72 (5) & 169.] Section 111.

(2.) A decree passed in favour of the plaintiff in any such suit shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within 15 days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3.) The Court may for special reasons extend the period of 15 days mentioned in this section.

79. In fixing the rate of interest on an arrear of rent, the Court shall have regard to established usage and to the agreement, if any, between the parties; but shall ordinarily decree simple interest at the rate of 12 per centum per annum from the expiration of the agricultural year in which the arrear fell due to the institution of the suit. Interest on arrears. [D. § 101. C. B., s. 56. B. B., s. 48.] Section 108.

80. (1.) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding 25 per centum on the amount of rent decreed, as it thinks fit: Power to award damages on rent withheld without reasonable cause or to defendant improperly sued for rent. [D. § 68. C. B., s. 90. B. B. s. 96.]

Provided that interest shall not be decreed when damages are awarded under this section. Section 109.

(2.) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding 25 per centum on the whole amount claimed by the plaintiff, as it thinks fit: [D. § 69. C. B., s. 91. B. B., s. 97.] Section 110.

Produce-Rents.

81. (1.) Where rent is taken by appraisement or division of the produce,— Order for appraising or dividing produce. [C. B., s. 84. B. B., s. 88.] Section 112.

(*a.*) If either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or—

(*b.*) If there is a dispute about the quantity, value, or division of the produce,

The Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2.) The Collector may, without such an application, make the like order in any case where, in the opinion of the magistrate of the district or sub-division the making of the order would be likely to prevent a breach of the peace.

(3.) Where a Collector makes an order under this section, he may by order prohibit the removal of the produce until the appraisement or division has been effected.

82. (1.) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selecting those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given. Procedure where officer appointed. Section 113.

(2.) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made, but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3.) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector. Section 115 (1).

(4.) The Collector shall consider the report, and after giving the parties an opportunity Section 115 (2).

opportunity of being heard and making such inquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5.) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a civil court, but, subject as aforesaid, his order shall be final and shall be enforceable as a decree.

[C. B., s. 85, B. B., s. 89.] Section 118.

(6.) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

Rights and liabilities as to possession of crop.

83 (1.) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2.) Where rent is taken by division of the produce, the tenant shall be entitled to exclusive possession of the whole produce until it is divided.

(3.) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord, but shall not be entitled to remove any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time.

(4.) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Liability for Rent on Change of Landlord.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer. [D. § 9. C. B., s. 78. B. B., s. 70.] Section 122.

84. (1.) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer, and was paid to the landlord, whose interest was so transferred, unless the transferee has given notice of the transfer to the tenant.

(2.) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Illegal Cesses, &c.

Abwab, &c., illegal. [D. §§ 13 & 57. C. B., s. 71. B. B., s. 63. (2).] Section 123.

85. All impositions upon tenants under the denomination of *abwab mahtut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Penalty for exaction by landlord from tenant of sum in excess of the rent payable. [D., § 64. B. B., ss. 63 (2), 64 (*a*), 93.] Section 124.

86. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding 500 rupees; or, when double the amount or value of what is so exacted exceeds 500 rupees, not exceeding double that amount or value.

CHAPTER IX.

Miscellaneous Provisions as to Landlords and Tenants.

Improvements.

Definition of improvement. [C. B., s. 29. B. B., s. 69.] Section 126.

87. (1.) For the purposes of this Act the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the letting-value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2.) The following shall be presumed until the contrary is shown to be improvements within the meaning of this section:—

(*a.*) The construction of wells, tanks and other works for the storage, supply, or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b.*) The preparation of land for irrigation;

(*c.*) The

(*c.*) The drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste land which is culturable;

(*d.*) The reclamation, clearance, inclosure, or permanent improvement of land for agricultural purposes;

(*e.*) The renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

(*f.*) The erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3.) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of the estate or tenure of his landlord.

Right to make improvements in case of holding at fixed rates.

88. Where a raiyat holds at a fixed rent or a fixed rate of rent, his landlord shall not be entitled, as such, to prevent him from making any improvement in respect of his holding.

Right to make improvement in case of occupancy-holding. [C. B., s. 77. B. B., s. 69.] Section 127.

89. (1.) Where a raiyat has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2.) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it unless it affects another holding or other holdings under the same landlord.

(3.) If a question arises between the raiyat and his landlord—

(*a.*) As to the right to make an improvement, or

(*b.*) As to whether a particular work is an improvement,

The collector may, on the application of either party, decide the question, and his decision shall be final.

Right to make improvement in case of non-occupancy holding. [C. B., s. 77. B. B., s. 69.] Section 128.

90. (1.) A non-occupancy-raiyat shall be entitled to erect a suitable dwelling house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2.) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord, a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

Registration of landlord's improvements.

91. (1.) A landlord may register any improvement which he has lawfully made or which has been lawfully made at his expense, or which he has assisted a tenant in making, by application to such revenue officer as the local government may appoint.

(2.) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the local government by rule directs.

(3.) The officer receiving the application may reject it if it has not been made within 12 months.

(*a.*) In the case of improvements made before the commencement of this Act, from the commencement of this Act;

(*b.*) In the case of improvements made after the commencement of this Act, from the date of the completion of the work.

Application to record evidence as to improvement.

92. (1.) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a revenue officer, who shall thereupon record the evidence in the presence of the parties, unless he considers that there are no reasonable grounds for making

the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2.) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

Compensation for raiyats' improvements.
[C. B. ss. 20 (*e*) and 29.]
Section 129.

93. (1.) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been made.

(2.) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3.) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4.) Improvements made by a raiyat between the 2nd day of March 1883 and the commencement of this Act shall be deemed to have been made in accordance with this Act.

Section 130.

(5.) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Principle on which compensation is to be estimated.
Section 131.

94. (1.) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(*a.*) To the amount by which the letting value, or the produce, of the holding, or the value of that produce, is increased by the improvement.

(*b.*) To the condition of the improvement, and the probable duration of its effects;

(*c.*) To the labour and capital required for the making of such an improvement;

(*d.*) To any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(*e.*) In the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2.) When the amount of the compensation has been assessed, the landlord and raiyat may, if they think fit, agree that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Surrender and Abandonment.

Surrender.
[D. § 12 (3). C. B., s. 79 (3). B. B., s. 72 (3).]
Section 130.

95. (1.) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his right and interest in the holding.

(2.) But, notwithstanding the surrender, the raiyat shall continue to be liable for the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3.) In the following cases the Court shall for the purposes of this section presume, until the contrary is shown, that such notice was so given, namely:—

(*a.*) If the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(*b.*) If the raiyat ceases, at least three month before the end of the agricultural

tural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate;

(*c.*) If the landlord himself, at any time during the agricultural year next following the surrender, lets to another tenant or cultivates the holding or any part thereof.

(4.) The raiyat may, if he thinks fit, cause the notice to be served through the Court within the jurisdiction of which the holding or any portion of it is situate.

(5.) When a raiyat has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

Abandonment. [D. s. 12 (4). C. B., s. 79 (4). B. B., s. 72 (4).] Section 140.

96. (1.) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2.) When a landlord enters under this section he shall cause a notice in the prescribed form to be published in such manner as the Local Government by rule directs, stating that he has treated the holding as abandoned and has entered on it accordingly.

(3.) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may order recovery of possession on such terms, if any, with respect to compensation to persons injured as to the Court may seem just.

Sub-division of Holding.

Portion of holding not transferable. [B. B., ss. 21 (*b*), 37.] Section 150.

97. Nothing in this Act shall entitle a tenant whose holding is transferable to transfer or bequeath, without the consent of his landlord, a portion only of the land comprised in the holding, so that it may be held from the landlord by the transferee or the person to whom it is bequeathed as a separate holding.

Ejectment.

No ejectment except in execution of decree. [C. B., s. 79 (5), (6) & (7). B. B., s. 72 (5), (6) and (7).] Section 149.

98. No tenant shall be ejected from his holding except in execution of a decree.

Measurements.

Landlord's right to measure land. [D. § 58. C. B., s. 75. B. B., s. 67.] Section 133.

99. (1.) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorised by him on this behalf, enter on and measure all land comprised in his estate or tenure.

(2.) A landlord shall not, without the consent of the tenant, or the written permission of the collector, be entitled to measure land more than once in ten years, except in the following cases:—

(*a.*) Where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area.

(*b.*) Where the area under cultivation is liable to vary from year to year, and the rent payable depends on the area under cultivation.

(*c.*) Where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3.) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

Power for Court to order tenant to attend and point out boundaries. [D. s. 94. [B. B., s.s. 176 & 177.] Sections 134 and 135.

100. (1.) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

 (2.) If

(2.) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

Standard of measurement.
[D. § 94.
C. B., s. 76 (*a*).
B. B., s. 68 (*a*).]
Section 137.

101. (1.) Every measurement of land made by order of a Civil Court, or of a Revenue officer, in any suit or proceeding between a landlord and tenant, shall be made according to the Government measure of 14,400 square feet to one standard bíghá.

(2.) If the rights of the parties are regulated by any different local measure, the Government measure shall be converted into the local measure for the purposes of the suit.

[D. § 98.
C. B., s. 76 (*b*).
B. B., s. 68 (*b*).]
Section 138.

(3.) The Local Government may, after local inquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.
[D. § 16.
C. B., s. 56 (1).
B. B., s. 57 (1).]
Section 142,

102. When co-owners of an estate or tenure disagree as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(*a.*) Inconvenience to the public, or

(*b.*) Injury to private rights,

The District Judge may, on the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

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Power to order them to appoint a manager if cause is not shown.
[C. B., s. 65 (2).
B. B. s 57 (2).]
Section 143.

103. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to appoint manager if order is not obeyed.
[C. B., s. 66 (1).
B. B., s. 58 (1).]
Section 144.

104. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time—

(*a.*) Direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards assents to undertake the management thereof; or

(*b.*) In any case appoint a manager.

Power to nominate person to act in all cases under clause (*b*) of last section.
[C. B., s. 66 (2).
B. B., s. 58 (2).]
Section 145.

105. The Lieutenant Governor of Bengal may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under Clause (*b*) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

The Court of Wards Act, 1879, applicable to management by Court of Wards.
[C. B., s. 66 (3.)
B. B. s. 58 (3).]
Section 146.
IX. (B. C.) of 1879.

106. In any case in which the Court of Wards undertakes the management of an estate or tenure under Section 104, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immovable property shall apply to the management.

107. (1.) A manager appointed under Section 104 shall receive by way of remuneration such fixed salary or percentage of the money collected by him as manager as the District Judge from time to time directs. Provisions applicable to manager. [C. B., s. 67. B. B., S. 59.] Section 147.

(2.) He shall give such security for the proper discharge of his duty as the District Judge directs.

(3.) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4.) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5.) He shall keep regular accounts, and allow the co-owners, or any of them, to inspect and take copies of those accounts.

(6.) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7.) He may make any application which the proprietors could make under Section 112.

(8.) He shall be removable by the order of the District Judge, and not otherwise.

108. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under Section 104, the District Judge may at any time direct that the management of it be restored to the co owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights. Power to restore management to co-owners. [C. B., s. 68. B. B., s. 60.] Section 148.

109. The High Court may from time to time make rules defining the powers and duties of managers under the foregoing sections. Power to make rules.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Record-of-rights.

110. (1.) The Local Government may in any case, with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a record-of-rights shall be prepared for all tenancies, or any class of tenancies, in a local area by revenue officers to be from time to time appointed by the Local Government. Power to order preparation of record of rights. Section 164.

(2.) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following, namely :—

(*a.*) Where the landlord, or a large proportion of the landlords or of the tenants, applies for such an order, and deposits for the payment of expenses such amount as the Local Government directs.

(*b.*) Where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally ; and

(*c.*) Where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards.

(3.) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

111. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include some or all of the following, namely :— Particulars to be recorded. Section 164.

(*a.*) The name of each tenant;

(*b.*) The class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat;

(*c.*) The situation, quantity and boundaries of the land held by him;

(*d.*) The name of his landlord;

(*e.*) The rent payable;

(*f.*) The mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

(*g.*) If the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(*h.*) The special conditions, if any, under which the tenant holds.

Power for revenue officer to record particulars on application of proprietor or tenure holder.

112. On the application of a proprietor or tenure-holder, and on his depositing the required amount for expenses, a revenue officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

Publication of record. Sections 157 to 159.

113. (1.) When the revenue officer has completed the record he shall cause a draft thereof to be locally published in such manner and for such period as the Local Government by rule directs, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

(2.) After the expiration of this period the revenue officer shall finally settle the record, and shall cause it to be locally published in such manner as the Local Government by rule directs, and such publication shall be conclusive evidence that the record has been duly made under this chapter.

Procedure in case of dispute as to entries in record.

114. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry which the Revenue officer proposes to make or has made therein, the Revenue officer shall hear and decide the dispute, and for that purpose shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision shall have the force of a decree.

XIV. of 1882.

Appeals from decisions of revenue officers.

115. (1.) The Local Government shall appoint one or more persons to be a special judge or special judges for the purpose of hearing appeals from the decisions of revenue officers under the last foregoing section.

(2.) An appeal shall lie to the special judge from the decision of a revenue officer under the last foregoing section, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

XIV. of 1882.

(3.) Subject to the provisions of Chapter XLII. of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a special judge as if he were a court subordinate to the High Court within the meaning of the first section of that chapter.

XIV. of 1882.

Undisputed entries in record to be presumptive evidence. Section 165.

116. (1.) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

(2.) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

Settlement of Rents.

Power to order revenue officers to settle rents. Settlement of rents. Section 151.

117. (1.) The Local Government may, if it thinks fit, in any of the cases next hereinafter mentioned, make an order directing that the rents of all tenants, or of any class or classes of tenants, in any local area shall be settled by revenue officers to be from time to time appointed by the Local Government in this behalf:

Provided that the Local Government shall not make such an order until it is satisfied after local inquiry that the making of the order would be expedient.

(2.) The

(2.) The cases in which an order may be made under this section are the following, namely:

(*a*.) Any case in which a revenue officer may be directed under this chapter to prepare a record-of-rights, and

(*b*.) Where a settlement of revenue is being made in respect of the local area.

(3.) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made, and an order so notified shall continue in force until it is rescinded by an order notified in like manner.

(4.) While an order under this section continues in force in respect of any tenants, a Civil Court shall not entertain a suit under this Act for the enhancement or reduction of the rents of any of those tenants. Section 152.

118. (1.) When a revenue-officer is directed under this chapter to make a settlement of rents he shall ascertain and make a record of the particulars specified in Section 111, and such other particulars, if any, as the Local Government may direct him to ascertain and record. Procedure for settlement of rents. Section 156.

(2.) If at any time before the rent-roll is finally published as hereinafter provided, a dispute arises as to the correctness of any entry which the officer has made or proposes to make in the record under Sub-section (1), the provisions of Sections 114 and 115 shall apply.

(3.) In the case of a tenure, the rent of which is liable to alteration, or an occupancy-raiyat's holding, the officer shall, on the application of either landlord or tenant, settle a fair and equitable rent in respect thereof. Section 153.

(4.) For this purpose he shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in settling rents. Section 153.

(5.) In all proceedings under Sub-sections (3) and (4), the officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure, and his decision in every such proceeding shall have the force of a decree. XIV. of 1882.

(6.) An appeal shall lie from every such decision to the Special Judge appointed under Section 115, whose decision thereon shall be final, subject to this qualification, that if in a second appeal under Sub-section (2) of this section, the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any holding has been settled, the Court may settle a new rent for the holding, but in so doing shall be guided by the rents of the other holdings of the same class comprised in the same rent-roll, as ascertained or settled under this section.

(7.) When the revenue-officer has recorded the particulars and settled the rents which he is required to record and settle, he shall prepare the draft of one or more rent-rolls, showing the particulars recorded by him, and, when he settles the rent, the amount of the rent as settled.

(8.) Section 113 shall apply to every rent-roll made under this section as if it were a record within the meaning of that section, and Section 116 shall apply to all entries made in any such rent-roll under Sub-section (1) of this section.

119. When any rent is altered under the last foregoing section, the alteration shall take effect from the beginning of the agricultural year next after the final publication of the rent-roll. Time at which alteration of rent is to take effect.

120. When a landlord is entitled to apply to have the amount of the rent of a holding settled under Section 118, Sub-section (3), the rent of the holding, as ascertained or settled under this chapter shall not be enhanced during a period of 15 years from the date of the final publication of the rent-roll, except on the ground of a landlord's improvement, or of an alteration in the area of the holding. Period for which rents as settled are to remain unaltered.

Supplemental.

Expenses of proceedings under chapter. Section 163.

121. Where an order is made under this chapter on the application of a landlord, or of several landlords or tenants, or for the purpose of settling or averting a serious dispute between tenants and their landlords, all expenses incurred by the Government in carrying out the provisions of this chapter in any local area, including the salaries of all officers employed exclusively in carrying out those provisions therein, and such portions as the Local Government may, from time to time, fix of the salaries of officers employed in carrying out those provisions therein, in addition to their other public duties, shall be defrayed by the landlords and tenants in that local area whose rents are ascertained or settled under this chapter, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of revenue due by him.

Presumption as to fixity of rent not to apply where record has been prepared.

122. When the particulars mentioned in Section 111, Clause (*b*), have been recorded under this chapter in respect of any tenancy, the presumption under Section 64 shall not thereafter apply to that tenancy.

CHAPTER XI.

TABLES OF RATES.

Power to direct preparation of table.
[B. B., ss. 131 and 132.]
Section 62.

123. The Local Government may, by an order in the official Gazette, direct a revenue officer to take steps to prepare for any local area, with the aid of such assessors as the Local Government may appoint in this behalf, a table showing for each class of land comprised in that area the rate of rent fairly and equitably payable by occupancy-raiyats.

Contents of table.
[B. B., s. 133.]
Section 63.

124. The table shall specify—

(*a.*) The several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is necessary to fix different rates of rent; and

[B. B., s. 133.]
Section 64.

(*b.*) The rate of rent fairly and equitably payable by occupancy-raiyats holding land of each such class.

Principle on which rent-rates are to be fixed.

125. In fixing the rate of rent for any class of land under Section 124 regard shall be had—

(*a.*) To the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time when the table is prepared;

(*b.*) To the average prices of staple food crops in the locality, or at the usual markets about the time at which those rates were fixed, or, if that time or the average prices about that time cannot readily be ascertained, to the average prices about any other time which it may appear equitable and practicable to take for the purpose of comparison;

(*c.*) To the average prices of staple food crops in the locality, or at the usual markets at the time at which the table is prepared; and

[C. B., s. 23 (*b.*). B. B., s. 24 (*b.*).]

(*d.*) To the following rule, namely, that when the rate of rent for any class of land is raised on account of an increase in the average prices of staple food crops, the new rate shall not bear to the old rate a higher proportion than the increased average prices bear to the former average prices:

[C. B., s. 23 (*c.*). B. B., s. 24 (*c.*)]

Provided that the rate fixed for any class of land shall not exceed the existing rate by more than four annas in the rupee.

126. When

126. When the revenue officer has prepared the table, he shall publish it in the local area to which it relates, in the vernacular language prevailing in that local area, in such manner as the Local Government may from time to time prescribe.

Local publication of the table.
[B. B., s. 137.] Section 65.

127. Any person objecting to any entry in the table may present a petition to the revenue officer within a period of one month after the publication; and the revenue officer, with the aid of the assessors, shall consider any such objection, and may alter or amend the table.

Revenue officer to deal with objections.
[B. B., s. 138.] Section 66.

128. If no objection is made within the said period of one month, or, where objections are made, after those objections have been disposed of, the revenue officer shall submit the table, together with his proceedings, a report setting forth the grounds of his decision on each point, and any petitions of objection which may have been received through the Commissioner of the Division to the Board of Revenue for approval.

Table to be submitted to superior revenue authorities.
[B. B., s. 139.] Section 67.

129. The Board of Revenue may amend the table submitted under the last foregoing section in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further inquiry.

Proceedings of Board of Revenue thereupon.
[B. B., s. 140.] Section 68.

130. When a table of rates has been sanctioned by the Board, it shall be submitted to the Local Government, which, after considering such objections as may be submitted to it in writing, may amend the table in any manner it thinks fit, and may direct, if it thinks fit, that the table or amended table shall be published in the official Gazette with a specification of the local area to which it applies.

Publication of table after final sanction.
[B. B., s. 141.] Section 69.

131. A table for any local area published under the last foregoing section shall come into force on the date on which it is so published, and shall continue in force for such period, not less than 15 or more than 30 years, as the Local Government at the time of publication may direct.

Period for which table remains in force.
[B. B., s. 143.] Section 70.

132. The publication of a table under Section 130 shall be conclusive evidence in any proceeding under this Act.

Table to be conclusive evidence.
[B. B., s. 142.] Section 71.

(1.) That the proceedings for the preparation of the table have been duly conducted in accordance with this Act; and

(2.) That, except as in this Act provided, the rates shown in the table for each class of land are the fair and equitable rates payable for land of that class by occupancy-raiyats within the local area to which the table applies.

133. All expenses incurred by the Government in preparing a table of rates for any local area, including the salaries of all officers employed exclusively in its preparation, and such portions as the Local Government may from time to time fix of the salaries of officers employed in its preparation in addition to their other public duties, shall be defrayed by occupancy-raiyats and their landlords in that local area, in such proportions as the Local Government may from time to time determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of land-revenue due by him.

Expenses incurred in preparing table how defrayed.
Section 72.

134. When a table is in force under the foregoing sections for any local area, the landlord of any holding within that area held by an occupancy-raiyat at a money rent, may institute a suit to enhance the rent then payable on the ground that it is below that which would be payable at the rates shown in the table; and the Court shall enhance the rent in accordance with the rates shown in the table: Provided that—

Suit to enhance where table is in force.
[B. B., s. 144.] Section 73.

1st. Where the rent of any land comprised in the holding would, by reason of a change having taken place in or in regard to the land since the raiyat or his predecessor in interest began to hold it, be fixed under this section at a higher rate, and would, but for that change, have been

fixed under this section at a lower rate, the following rules shall apply, namely:—

C., s. 43.
C. B., s. 22, cls. (3) and (4).
B. B., s. 23, cls. (3) and (4).]

(*a*.) If the change has been effected solely by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of that land at the lower rate.

(*b*.) If the change has been effected partly by the agency or at the expense of the landlord or his predecessor in interest, and partly by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of the land at such rate intermediate between the higher rate and the lower rate as, having regard to all the circumstances of the case, it thinks fair and equitable; and

[C. B., s. 23, cl. (*a*).
B. B., s. 24 (*a*).]

(*c*.) If it is not proved that the change has been effected by the agency or at the expense of the landlord or the raiyat, or the predecessor in interest of either of them, the Court shall fix the rent of the land at a rate equal to the lower rate, together with half the difference between the higher rate and the lower rate.

2ndly. When the raiyat proves that by contract or by custom, or on some equitable ground, he is entitled to hold at a rate lower than the rate applicable under this section, the Court shall fix the rent at the lower rate.

3rdly. Section 49 shall apply to all decrees for enhancement passed under this section, and Section 50 shall apply to all suits for enhancement under this section as if they were suits for enhancement under Chapter V. on the ground that the rent is below the prevailing rate or on the ground of an increase in prices.

Illustrations.

(*a*.) The rates shown in the table for land of a certain description are—

When the land is irrigated from a well	-	-	-	-	4	rupees	per acre.
When the land is not so irrigated	-	-	-	-	2	„	„

The holdings of A., B., C., and D. occupancy-raiyats are composed of land of that description irrigated from wells constructed on these holdings respectively.

The well on A.'s holding is an ancient one, existing from a time anterior to the tenancy; that on B.'s holding has been constructed by the landlord since the commencement of the tenancy; that on C.'s holding has been constructed by the raiyat; that on D.'s holding has been constructed by the landlord and raiyat, each contributing some portion of the labour and materials. The rents of the holdings of A. and B. must be fixed at 4 rupees per acre, that of C.'s holding at 2 rupees per acre, and that of D.'s holding at such rate intermediate between 2 rupees and 4 rupees as the Court thinks fit and equitable.

(*b*.) The rates shown in the table for land of a certain description are as follows:—

When such land is irrigated from a branch of a river	-	-			4	rupees	per acre.
When such land is not so irrigated	-	-	-	-	2	„	„

The holdings of E. and F., occupancy-raiyats, are composed of land of that description, and were not irrigable until 40 years ago, when owing to a change in the course of a neighbouring river, a new branch established itself contiguous to them. E. has been in occupation of his holding 50 years, F. only 30; the rent of E.'s holding must be fixed at 3 rupees, that of F.'s holding at 4 rupees.

CHAPTER XII.

Record of Proprietor's Private Lands.

Power for Government to order survey and record of proprietor's private lands.

B. B., ss. 76 to 82.] Sections 7 to 13.

135. The Local Government may, from time to time, make an order directing a revenue officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of Section 30.

Power for revenue officer to record private land on application of proprietor or tenant.

136. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a revenue officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

137. When

137. When a revenue officer proceeds under either of the two last foregoing sections, the provisions of sections 113, 114, 115, and 116 shall apply. Procedure for recording private land.

138. (1.) The revenue officer shall record as a proprietor's private land— Rules for determination of proprietor's private land. [C. B., s. 81. B. B., ss. 3 and 75.] Section 5.

(*a.*) Land which is proved to have been cultivated as khámár, zírat, sír, nij, nij-jot or kamat by the proprietor himself with his own stock, or by his own servants, or by hired labour for 12 continuous years immediately before the passing of this Act, and

(*b.*) Cultivated land which is recognised by village custom as proprietor's khámár, zírat, sír, nij, nij-jot or kamat.

(2.) In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the 2nd day of March 1883, specifically let as proprietor's private land; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3.) If any question arises in a Civil Court as to whether land is, or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of revenue officers.

CHAPTER XIII.

DISTRAINT.

139. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator, Cases in which an application for distraint may be made. [B. B., ss. 101. 104. 123.] Section 166.

(*a.*) Any crops or other products of the earth standing or ungathered on the holding;

(*b.*) Any crops or other products of the earth which have been grown on the holding and have been reaped or gathered, and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

(1.) By a proprietor or manager as defined under the Land Registration Act, 1876, or a mortagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due, have been registered under the provisions of that Act; or VII. (B. C.) of 1876.

(2.) For the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract, or in consequence of a proceeding under this Act, or an enactment hereby repealed; or

(3.) In respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord. [B. B., ss. 71. 125.]

140. (1.) Every application under the last foregoing section shall specify— Form of application [B. B., ss. 104–5.] Section 167.

(*a.*) The holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(*b.*) The name of the tenant;

(*c.*) The period in respect of which the arrear is claimed;

(*d.*) The amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;

 (*e.*) The

(*e.*) The nature and approximate value of the produce to be distrained;

(*f.*) The place where it is to be found, or such other particulars as may suffice for its identification; and

(*g.*) If it is standing or ungathered, the time at which it is likely to be cut or gathered.

IV. of 1882.

(2.) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints; and, if the application so verified contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Procedure on receipt of application.

[B. B., ss. 105 and 106.]

Section 168.

141. (1.) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2.) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3.) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4.) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

Execution of order of distraint.

[B. B., s. 107.]

Section 169.

142. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

[*D.*, § 111.]

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than 20 days before the time when it would be fit for reaping or gathering.

Service of demand and account.

[B. B., s. 108.]

Section 170.

143. (1.) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(2.) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3.). The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on the outer door of the house in which he usually resides.

Right to reap, &c., produce.

[B. B., ss. 109 and 110.]

Section 171.

144. (1.) A distraint under this chapter shall not prevent any person from reaping, gathering, or storing any produce, or doing any other act necessary for its due preservation.

(2.) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood,

neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3.) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

145. (1.) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a specified day, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction:

Sale proclamation to be issued unless demand is satisfied.
[B. B., s. 113.]
Section 172.

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2.) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

146. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage.

Place of sale.
[B. B., s. 114.]
Section 173.

147. (1.) Crops or products, which from their nature admit of being stored, shall not be sold before they are reaped or gathered and are ready for storing.

When produce may be sold standing.
[D., s. 111.]
Section 174.

(2.) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

148. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Manner of sale.
[B. B., s. 115.]
Section 175.

149. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Postponement of sale.
[B. B., s. 116.]
Section 176.

150. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Payment of purchase money.
[B. B., s. 117.]
Section 177.

151. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him, and the price paid.

Certificate to be given to purchaser.
[B. B., s. 118.]
Section 178.

152. (1.) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made by the Local Government in this behalf.

Proceeds of sale how to be applied.
[B. B., s. 119.]
Section 179.

(2.) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

153. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Certain officers may not purchase.
[B. B., s. 120.]
Section 180.

 154. (1.) If

Procedure where demand is paid before the sale.
[B. B., ss. 111, 112, and 123.]
Section 181.

154. (1.) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under Section 143, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same, and the distraint shall forthwith be withdrawn.

(2.) When the distraining officer receives the deposit he shall forthwith pay it into the Court.

(3.) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4.) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint, and claiming compensation in respect of the same.

(5.) A landlord shall not be deemed to have consented to his tenant's subletting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant."

Amount paid by undertenant for his lessor may be deducted from rent.
[B. B., s. 124.]
Section 182.

155. (1.) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2.) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

Conflict between rights of superior and inferior landlords.
[B. B., 126.]
Section 183.

156. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Distraint of property which is under attachment.
Section 184.

157. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid to the owner of the property under Section 152 without the sanction of the Court by which the order of attachment or sale was issued.

Suit for compensation for wrongful distraint.

158. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 140 in any case in which such an application is not permitted by section 139 may institute a suit against the applicant for the recovery of compensation.

CHAPTER XIV.

Judicial Procedure.

Power to modify Civil Procedure Code in application to landlord and tenant suits.
XIV. of 1882.

159. (1.) The High Court may, from time to time, with the approval of the Local Government, make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2.) Subject

(2.) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits. XIV. of 1882.

160. (1.) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant exists between the parties. Jurisdiction in proceedings under Act. Section 188. XIV. of 1882.

(2.) When under this Act a Civil Court is authorised to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the recovery of possession of the holding.

161. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit, be deemed to be the recognised agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court, in which the suit is to be instituted or is pending. Náibs or gumáshtas to be recognised agents. [D., § 169. C. B., s. 150. B. B., s. 167 (*a.*).] Section 189. XIV. of 1882.

162. The particulars referred to in Section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may from time to time prescribe in this behalf. Special register of suits. [D., § 173. C. B., s. 147. B. B., s. 164.] Section 190. XIV. of 1882.

163. The following rules shall apply to suits for the recovery of rent:— Procedure in rent-suits.

(*a.*) Sections 121 to 127 (both inclusive), 129, 305 and 320 to 325 (both inclusive), of the Code of Civil Procedure shall not apply to any such suit. [C. B., s. 165. B. B., s. 187.] Section 191. XIV. of 1882.

(*b.*) The plaint shall contain, in addition to the particulars specified in Section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent, and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification. [D., §§ 149 and 185. C. B., s. 167. B. B., s. 189.] Section 192. XIV. of 1882.

(*c.*) The summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only. [D., § 192. C. B., s. 174. B. B., s. 195.] Section 193.

(*d.*) The service of the summons may, if the Court so directs, be effected, either in addition to or in substitution for any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III. of the Indian Post Office Act, 1866. Section 194. XIV. of 1882.

(*e.*) A written statement shall not be filed without the leave of the Court. [D., § 108. C. B., s. 184. B. B. s. 206.] Section 195.

(*f.*) The rules for recording the evidence of witnesses prescribed by Section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not. [B. B., s. 214.] Section 196. XIV. of 1882.

(*g.*) The Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears. [D., §§ 177 and 223. C. B., ss. 155 and 197. B. B., ss. 171 and 219.] Section 197.

(*h.*) Notwithstanding anything contained in Section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him. XIV. of 1882. [C. B., s. 198. B. B., s. 220.] Section 200.

164. (1.) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take Payment into Court of money admitted to be due to third person. Section 199.

cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2.) Where such a payment is made the Court shall forthwith cause notice of the payment to be served on the third person.

(3.) Unless the third person within *three months* from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4.) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under Sub-section (3).

Payment into Court of money admitted to be due to landlord.

165. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Provision as to payment by instalments.

166. When a defendant is liable to pay money into Court under either of the last foregoing sections, if the Court thinks that there are sufficient reasons for ordering that the money be paid by instalments, it may take cognizance of the defendant's plea on his paying into Court such instalment as the Court directs.

Court to grant receipt.
Section 199 (2).

167. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

Appeals in rent suits.
[D., § 179.
C. B., ss. 157 and 220.
B. B., ss. 173 and 242.]
Section 198.

168. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(*a.*) The decree or order is passed by a district judge, additional judge, or subordinate judge, and the amount claimed in the suit does not exceed 100 rupees, or

(*b.*) The decree or order is passed by any other judicial officer specially empowered by the local government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed 50 rupees ;

Unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant:

Provided that the district judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity ; and may pass such order as the district judge thinks fit.

Date from which decree for enhancement takes effect.
[C. B., ss. 96 and 98 (*b.*)]
B. B., ss. 128 and 130 cl. (*b.*).
Section 201.

169. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing for special reasons a later date from which any such decree shall take effect.

Relief against forfeitures.
[B. B., ss. 21 (*e.*) 31 44 & 45 Vict. C. 41, s. 14.]
Section 202.

170. (1.) A suit for the ejectment of a tenant, on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord has requested the tenant, where the damage or breach

breach is capable of remedy, to remedy the same, and, in any case, to pay reasonable compensation for the damage or breach, and the tenant has failed to comply within a reasonable time with that request.

(2.) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the damage or breach, and whether, in the opinion of the Court, the damage or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and where the damage or breach is declared to be capable of remedy, to remedy the same.

(3.) The Court may from time to time, for special reasons, extend a period fixed by it under Sub-section (2.)

(4.) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the damage or breach is declared by the Court to be capable of remedy, remedies the damage or breach to the satisfaction of the Court, the decree shall not be executed.

Rights of ejected raiyats in respect of crops and land prepared for sowing.
[C. B., s. 80, B. B., s. 73.] Section 203.

171. The following rules shall apply in the case of every raiyat ejected from a holding.

(*a*.) When the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment.

(*b*.) When the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value.

(*c*.) But a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage.

[C. B., s. 86. B. B., s. 73.] Section 204.

(*d*.) If the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

Adjustment of mutual claims in ejectment proceedings.
Section 205.

172. (1.) In all suits and proceedings for ejectment, the Court shall inquire into and determine all claims under this Act by the landlord against the tenant as such, or by the tenant against the landlord as such.

Section 206.

(2.) If it appears to the Court that the amount payable by the landlord to the tenant as such exceeds the amount payable by the tenant to the landlord as such, the decree or order for ejectment (if any) shall, unless the landlord and tenant come to an arrangement regarding the payment of the excess sum, specify a time within which it must be paid into Court.

(3.) If it is so paid within the time specified, the Court shall eject the tenant; and

If it is not so paid, the Court shall refuse to eject the tenant.

Power for Court to fix fair rent as alternative to ejectment.

173. When a plaintiff institutes a suit for the ejectment of a trespasser, he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Application to determine incidents of tenancy.
[C. B., s. 151. B. B., s. 168.] Section 207.

174. (1.) The Court having jurisdiction to determine a suit for the recovery of land held by a tenant may, on the application of either the landlord or the tenant, determine all or any of the following matters, namely:—

(*a*.) The

(*a.*) The situation, quantity and boundaries of the land held by the tenant;

(*b.*) The class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under raiyat, and if he is a tenure-holder, whether his rent is liable to enhancement; and

(*c.*) The rent payable by him at the time of the application.

(2.) If in the opinion of the Court any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV. of the Code of Civil Procedure by such revenue officer as the Local Government by rule directs.

XIV. of 1882.

(3.) The order on any application under this section shall have the effect of and be subject to the like appeal as a decree.

CHAPTER XV.

SALE FOR ARREARS UNDER DECREE.

General powers of purchaser as to avoidance of incumbrances.

175. Where a transferable holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests," but with power to annul the interests defined in this chapter as "incumbrances."

Provided as follows:—

(*a.*) A registered and notified incumbrance within the meaning of this chapter shall not be so annulled, except in the case hereinafter mentioned in that behalf;

(*b.*) The power to annul shall be exerciseable only in manner by this chapter directed.

Protected interests.
[D., §§ 12 (11) and 155.
C. B., ss. 226, Expl. and 210.
B. B., ss. 228, Expl. and 232.]
Section 208 (1.).

176. The following shall be deemed to be protected interests within the meaning of this chapter:—

(*a.*) Any under-tenure existing from the time of the permanent settlement;

(*b.*) Any under-tenure recognised by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(*c.*) Any lease of land whereon dwelling houses, manufactories, or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made;

(*d.*) Any right of occupancy;

(*e.*) Any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(*f.*) Any right or interest which the landlord at whose instance the holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Meaning of "incumbrance" and "registered and notified incumbrance."
Section 208 (1.).

177. For the purposes of this chapter:

(*a.*) The term "incumbrance" used with reference to a tenancy, means any lien, sub-tenancy, easement, or other right or interest created by the tenant on his holding, or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section.

[C. B., s. 206, Expl. B. B., s. 228, Expl. 1.]
Section 208 (2.).

(*b.*) The term "registered and notified incumbrance" used with reference to a holding sold, or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by an instrument

instrument registered under the Indian Registration Act, 1877, and of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided. III. of 1877.

Application for sale of holding.
[C. B., s. 201. B. B., s. 223.] Section 209. XIV. of 1882.

178. When a decree has been passed for an arrear of rent due for a transferable holding, and the decree-holder applies under Section 235 of the Code of Civil Procedure for the attachment and sale of the holding in execution of the decree, he shall produce a statement of the annual rent of the holding, and if the holding is a permanent tenure, a copy of so much of the register kept under Chapter III. of this Act as relates to the tenure.

Proclamation announcing sale.
[D., § 152. C. B., s. 203, B. B., s. 225.] Section 210. XIV. of 1882.

179. (1.) When an order has been passed for the sale of a holding upon an application made under the last foregoing section, the proclamation made under Section 287 of the Code of Civil Procedure shall, in addition to stating and specifying the particulars mentioned in that section, announce—

(*a.*) In the case of a tenure, that the tenure will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(*b.*) In the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(2.) The proclamation shall, besides being made in the manner prescribed by Section 289 of the said Code, be published in such manner as the Local Government may, from time to time, direct in this behalf.

Sale of tenure subject to registered and notified incumbrances, and effect thereof.
[C. B., s. 206. B. B., s. 228 (*a.*), and Expl.] Section 211.

180. (1.) When a tenure has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure shall be sold subject to such incumbrances.

(2.) The purchaser at a sale under this section may, in manner provided by Section 184, and not otherwise, annul any incumbrance upon the tenure not being a registered and notified incumbrance.

Sale of tenure with power to avoid all incumbrances, and effect thereof.
[C. B., s. 207. B. B., s. 229 (*a.*).] Section 212 (1.). XIV. of 1882.

181. (1.) If the bidding for a tenure put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under Section 289 of the Code of Civil Procedure, announcing that the tenure will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than 15, or more than 30 days from the date of the postponement; and upon that day the tenure shall be put up to auction and sold, with power to avoid all incumbrances.

[D., § 155. C. B., s. 210. B. B., s. 232.] Section 212 (2.).

(2.) The purchaser at a sale under this section may, in manner provided by Section 184, and not otherwise, annul any incumbrance on the tenure.

Application of foregoing provisions to holdings at fixed rates.

182. The foregoing sections shall apply to a holding at a fixed rent or rate of rent as if it were a tenure.

Sale of occupancy holding with power to avoid all incumbrances, and effect thereof.
[B. B., s. 228 (*b.*). Section 213.

183. (1.) When an occupancy-holding has been advertised for sale under Section 179, it shall be put up to auction and sold, with power to avoid all incumbrances.

(2.) The purchaser at a sale under this section may, in manner provided by Section 184, and not otherwise, annul any incumbrance on the holding.

Procedure for annulling incumbrances under the foregoing sections.
Section 214.

184. (1.) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date on which he first has notice of the incumbrance, present to the collector

collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2.) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3.) When an application for a service of a notice is made to the collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

Power to direct that occupancy holdings be dealt with under foregoing sections as tenures.
[B. B., s. 225. (c).]
Section 215.

185. (1.) The Local Government may, from time to time, by notification in the official "Gazette," direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2.) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

Rules for disposal of the sale proceeds.
[D., § 246.
C. B., s. 211.
B. B., s. 233.]
Section 216.
XIV. of 1882.

186. (1.) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by Section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

(*a.*) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale.

(*b.*) There shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made.

(*c.*) If there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the sale, but not more than six months after the date of the final decree.

(*d.*) The balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2.) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

Holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.
XIV. of 1882.
[D., § 153.
C. B., s. 204.
B. B., s. 226.]
Section 217.

187. (1.) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a holding attached in execution of a decree for arrears due thereon.

(2.) When an order for the sale of a holding in execution of such a decree has been made, the holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the holding on the ground that the decree has been satisfied out of Court.

(3.) Nothing in this section shall affect the right of any person to institute a suit to set aside the sale of a holding under this chapter.

Amount paid into Court to prevent sale to be in certain cases a mortgage debt on the holding.
[D., §§ 35, 36, 154.
C. B., s. 205.
B. B., s. 227.]
Section 218.

188. (1.) When any person having, in a holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale.

(*a.*) The amount so paid by him shall be deemed to be a debt bearing interest at 12 per cent. per annum and secured by a mortgage of the holding to him;

(*b.*) His

(*b.*) His mortgage shall take priority of every other charge on the holding other than a charge for arrear of rent; and

(*c.*) He shall be entitled to possession of the holding as mortgagee and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2.) Nothing in this section shall affect any other remedy to which any such person would be entitled.

189. When a holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Inferior tenant paying into Court may deduct from rent.
[D., §§ 35, 36, 154. C. B., s. 205, B. B., s. 227.]
Section 219.

190. (1.) Notwithstanding anything contained in Section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the holding.

(2.) The judgment-debtor shall not bid for or purchase a holding so sold.

Decree holder may bid at sale; judgment debtor may not.
XIV. of 1882.
[C. B., s. 208 (1.). B. B., s. 230 (1.).]
Section 220.

191. Sections 313 and 326 of the Code of Civil Procedure shall not apply to any sale under this chapter.

Operation of Sections 313 and 326 of Code of Civil Procedure excluded.
XIV. of 1882.
Section 221.

192. Notwithstanding anything contained in Part IV. of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any transferable holding which has been executed before the commencement of this Act, and is not required by Section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

Registration of certain instruments creating incumbrances.
Section 222.
III. of 1877.

193. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a transferable holding and creating an incumbrance on the holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the manner prescribed in Part VII. of the Indian Registration Act, 1877, for the service of summons.

Notification of incumbrances to landlord.
[C. B., s. 206, Expl. B. B., s. 2, Expl.]
Section 223.
III. of 1877.

CHAPTER XVI.

SUMMARY SALE FOR ARREARS.

Sale of Patní Tenures.

194. If default is made in payment of the rent due in respect of a patní tenure held immediately from a proprietor, the proprietor may, in addition to any other remedy given him by law, apply for the summary sale of the tenure in accordance with the rules contained in the following sections of this chapter.

Right of proprietor to recover arrears from patnidar by summary sale.
[D., § 135. C. B., s. 138. B. B., s. 147.]
Section 42.

195. (1.) On the first day of Baisákh, that is, at the commencement of the following year from that for which the rent is due, the proprietor may present a petition to the collector, containing a specification of any balances that may be due to him on account of the expired year, in respect of all or any of the tenures described in the last foregoing section.

Application for sale at beginning of year.
Bengal Regulation, VIII. of 1819, s. 8, cl. (2).
Schedule III.

(2.) The petition shall then be stuck up in some conspicuous part of the collector's office, with a notice that if the amount claimed is not paid before the first of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

(3.) The proprietor shall cause a similar notice to be stuck up at his own sadr kachari, and a copy or extract of such part of the notice as applies to the individual case to be sent and similarly published at the kachari at which the principal business of the tenure is transacted, or at the principal town or village on the land of the defaulter's tenure.

(4.) The proprietor shall be exclusively answerable for the observance of the forms prescribed by this section.

Service of Notice.

196. (1.) The notice required to be sent into the mufassal shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same; or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

(2.) If the people of the village object or refuse to sign their names in attestation, the peon shall go to the office of the nearest munsif, or, if there should be no munsif, to the nearest police station, and there make voluntary oath of the same having been duly published. A certificate to this effect shall be signed and sealed by the said officers and delivered to the peon.

(3.) If it appears from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the 15th day of the month of Baisákh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

Application for sale in middle of year.

Bengal Regulation, VIII. of 1819, s. 8, cl. (3.). Schedule III.

197. On the 1st day of Kártik, in the middle of the year, the proprietor may present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the 1st day of Aghan, unless the whole of the advertised balance is paid before the date in question, or so much of it as will reduce the arrear, including any intermediate demand for the month of Kártik, to less than one-fourth or a four-anna proportion of the total demand of the proprietor, according to the kistbandí, calculated from the commencement of the year to the last day of Kártik.

Proceedings when tenure-holder contests demand.

198. (1.) When a notice has been issued under the foregoing sections in respect of an arrear alleged to be due by a tenure-holder, the tenure-holder may, at any time before the day fixed therein for the sale of the tenure, present to the collector a petition contesting the demand wholly or in part.

(2.) The collector on receiving a petition under Sub-section (1) shall issue a summons to the proprietor requiring him to appear at a time and place specified therein, and show cause why the sale should not be stayed or the amount of the demand reduced, as the case may be, and shall, if practicable, hear the parties or such of them as appear, and determine the issues between them before the time fixed for the sale.

(3) If before the time fixed for the sale the collector decides that no part of the arrear claimed is due, he shall dismiss the proprietor's application.

(4.) If before that time he decides that any part of the arrear claimed is not due, he shall reduce the demand accordingly, and his decision shall for the purposes of the proceedings under this chapter be conclusive.

(5.) In cases not provided for by sub-Sections (3) and (4) the tenure-holder's petition shall be dismissed, but such dismissal shall not affect his right to institute a suit to set aside the sale.

199. Except

199. Except as provided by the last foregoing section, a tenure in respect of which a notice has been issued under the foregoing sections shall be sold on the day fixed by the notice unless before sunset of the previous day the amount of the demand, or, when that amount has been reduced under the last foregoing section, the reduced amount has been deposited in the collector's office by the defaulter or some other person for payment to the landlord.

Tenures liable to sale for arrears of rent. Bengal Regulation VIII. of 1819, s. 11

200. (1.) At the time of the sale, the notice previously stuck up in the kacharí shall be taken down, and the lots be called up successively in the order in which they may be found in the notice.

Forms to be observed in case of sale. Bengal Regulation, VIII. of 1819, Schedule III.

(2.) A person shall attend on the part of the proprietor with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, with the receipt for, or certificate of, the notice directed to be published in the mufassal.

(3.) No lot shall be put up to sale until the statement produced has been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice has been read. The observance of these forms shall be recorded in a separate rubakari to be held upon each lot sold.

(4.) If the sale is under a petition presented on the first day of Kártik the Kistbandí of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; and the sale shall not take place unless this is ascertained.

(7.) The proprietor shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, and the officer making the sale shall not be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this chapter.

201. (1.) All sales of tenures under this chapter shall be made in public kachari.

Mode of conducting sale. Bengal Regulation, VIII. of 1819, s. 9 Schedule III.

(2.) The land shall be sold to the highest bidder, and every one except the defaulter shall be free to bid.

(3.) Fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down.

(4.) The officer conducting the sale may refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

(5.) If the 15 per cent. is not paid in cash within two hours of the sale, or an equivalent amount in Government securities is not lodged, the lot shall be resold on the same day.

(6.) If the remainder of the purchase-money is not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bázár of the sadr station of the district.

(7.) The lot shall then be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of 15 per cent. already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent sale; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

(8.) The forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

202. (1.) When the entire amount of the purchase-money has been paid in by the purchaser of a tenure under this chapter, the collector shall grant him a certificate of the payment.

Title of purchaser. Bengal Regulation VIII. of 1819, s. 15 Schedule III.

(2.) Thereupon the purchaser shall acquire the tenure with power to avoid, in manner prescribed by Section 184 for the avoidance of incumbrances, all

liens, sub-tenancies, easements, and other rights or interests created on the tenure by the tenure-holder or any of his predecessors in interest or any person claiming under him or them, except—

(*a.*) A right of occupancy;

(*b.*) A right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; or

(*c.*) Any right or interest created under a power expressly conferred by the written instrument by which the tenure was created.

Purchaser to be put in possession.
Bengal Regulation, VIII. of 1819, s. 15. Schedule III.

203. When the purchaser of a tenure under this chapter has obtained a certificate in respect of the same under the last foregoing section, and the transfer of the tenure to him has been registered under Chapter III., he may apply to the collector to put him in possession of the tenure, and the collector shall thereupon put him in possession of the same, and for this purpose shall exercise all the powers conferred by the Code of Civil Procedure on a Civil Court giving possession to a purchaser at a sale in execution of a decree.

XIV. of 1882.

Recovery of money deposited by person interested to stay sale.
Bengal Regulation, VIII. of 1819, s. 13. Schedule III.

204. When any person having in a tenure advertised for sale under this chapter an interest which would be avoidable upon such sale deposits in the collector's office the amount requisite under Section 199 to prevent the sale, the provisions of Section 188 shall apply, and if the person is a tenant inferior to the tenure-holder, the provisions of Section 189 shall also apply, as if the tenure was a holding advertised for sale under Chapter XV., and the payment had been made into Court to prevent the sale.

Suit to set aside sale.
Bengal Regulation VIII. of 1819, s. 14. Schedule III.

205. (1.) Any person aggrieved by a sale of a tenure effected under cover of the provisions of this chapter but not warranted by those provisions may institute a suit against the proprietor, at whose instance the sale was effected, to set aside the sale and recover compensation for the damage caused to him thereby.

(2.) The purchaser of the tenure shall be made a party to the suit, and shall, if the sale is set aside, be entitled to recover in the suit from the proprietor compensation for the damage (if any) suffered by him.

Suit for compensation by persons whose interest becomes voidable in consequence of sale.
Bengal Regulation VIII. of 1819, s. 17, cls. (5.) and (6). Schedule III.

206. When a tenure has been sold under this chapter, any person having an interest therein which is under Section 202 voidable by the purchaser may, within two months from the date of the sale, institute a suit against the defaulter to recover compensation for the damage caused to him by the sale:

Provided that no such suit shall be maintainable by any tenant inferior to the defaulter if at the time of the sale any arrear of rent was due from him.

Disposals of proceeds of sales.
Bengal Regulation VIII. of 1819, s. 17. Schedule III.

207. (1.) The proceeds of a sale under this chapter shall be dealt with as follows, namely:—

(*a.*) One per cent. shall first be deducted from the proceeds, and shall be carried to the account of the Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this chapter.

(*b.*) The arrear on account of which the sale may have been made (with interest and all charges incurred in bringing the tenure to sale) shall next be paid to the landlord.

(*c.*) The balance (if any) remaining after the payments prescribed by Clauses (*a*) and (*b*) shall be forthwith sent by the officer conducting the sale to the treasury of the collector, to be there retained in deposit to answer the claims of persons who may obtain decrees for compensation under Section 206, until the expiration of two months from the date of the sale, and if within that period any suits are instituted under that section, until all such suits have been finally decided.

(*d.*) The balance retained under Clause (*c*) shall be applied in the first instance to the payment of the amounts of the decrees (if any) passed against the defaulter under Section 206, being distributed rateably among the

the decree holders according to the amounts of those decrees, when it is insufficient to discharge those amounts in full.

(*e.*) The residue (if any) of the said balance shall be payable to the defaulter.

(2.) Any person interested in money deposited under Clause (*c*) may withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shown by the "Government Gazette" last received.

208. When any day specified in this chapter is a Sunday or holiday, anything required or authorised under this chapter to be done on that day, may be done on the next following day, not being a Sunday or holiday. Provision as to Sundays and holidays.

Sale of other Tenures.

209. If provision is made by law for the registration in a public register of any tenures other than those saleable under the foregoing sections of this chapter, those sections shall, subject to such modifications as the Local Government from time to time by rule prescribes, apply to the tenures so registered. Modified application of chapter to other registered tenures.

CHAPTER XVII.

CONTRACT AND CUSTOM.

210. The provisions of this Act in respect of the following matters shall take effect notwithstanding any contract to the contrary:— Provisions to take effect notwithstanding contract.

(*a.*) The acquisition of the status of a settled raiyat and of the occupancy-right (Sections 24, 25, and 26).

(*b.*) The incidents of the occupancy-right specified in Section 31.

(*c.*) The right of an occupancy-raiyat to demand a reduction of rent under Section 51.

(*d.*) The right of either landlord or tenant to demand a commutation of a produce rent under Section 53.

(*e.*) The protection afforded by the Act to a non-occupancy-raiyat and an under raiyat from ejectment except on specified grounds (Sections 58, 59, 60, and 63).

(*f.*) The right of a tenant to a reduction of rent on account of the diminution of the area of his holding (Section 66).

(*g.*) The right of the raiyat to make improvements and claim compensation for them (Sections 88, 89, 90, and 93).

(*h.*) The protection afforded to all tenants against ejectment except in execution of a decree (Section 98).

211. Nothing in this Act shall be deemed to prevent a landlord in a permanently settled area from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant. Permanent mukarrari leases.

212. Nothing in this Act shall affect any contract for the reclamation of waste land. Contracts for reclamation.

213. (1.) Notwithstanding anything in this Act, a raiyat holding land of the kind known as chur or dearah, that is to say, land ordinarily liable to improvement or deterioration by fluvial action, shall not acquire a right of occupancy in the land until he has held the land for 12 continuous years; and, until he acquires a right of occupancy in the land, shall be liable to pay such rent for his holding as may be agreed on between him and his landlord. Chur and dearah lands.

(2.) But the Court may, on the application of either the landlord or the tenant, declare that any land has ceased to be chûr or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

Utbundi and hal-hasili systems.

214. Nothing in this Act shall affect the conditions, customary or otherwise, under which land is held on either of the systems known as the "utbundi" system and the "hal-hasili" system.

Saving as to service-tenures.
Section 226.

215. Nothing in this Act shall affect any incident of a ghátwálí or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Homesteads.
Section 85.

216. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom.

Saving of custom.

217. Nothing in this Act shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Illustration.

[C. B., s. 19, Expl. 4 (*f*.).
B. B., s. 19, Expl. 4 (*e*.), proviso.]
Section 4.

The custom that an under raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Act. That custom accordingly, wherever it exists, will not be affected by this Act.

CHAPTER XVIII.

LIMITATION.

Limitation in suits, appeals, and applications in Schedule IV.
[D., §§ 77, 78, and 79.
C. B., s. 92.
B. B., s. 98.]
Section 224.

218. (1.) The suits, appeals, and applications specified in Schedule IV. annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(2.) Nothing in this section shall revive the right to institute any suit or appeal, or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

Portions of the Indian Limitation Act not applicable to such suits, &c.

XV. of 1877.
[C. B., s, 93.
B. B., s. 99.]
Section 225.

219. Sections 7, 8, and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in Section 218.

CHAPTER XIX.

SUPPLEMENTAL.

Penalties.

Penalties for illegal interference with produce.

[B. B., ss. 91. 122.]

220. (1.) If any person, otherwise than in accordance with this Act or some other enactmen tfor the time being in force,

(*a*.) Distrains or attempts to distrain the produce of a tenant's holding, or

(*b*.) Resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*.) Except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing, or otherwise dealing with any produce of a holding,

XLV. of 1860.

He shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

(2.) Any

(2.) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (1) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Agents and Representatives of Landlords.

221. (1.) Any appearance, application or act, in, before or to any Court or authority, required or authorised by this Act to be made or done by a landlord may, unless the Court or authority otherwise directs, be made or done also by an agent of the landlord empowered in this behalf by a written authority under the hand of the landlord. Power for landlord to act through agent. Section 229.

(2.) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent of the landlord empowered as aforesaid to accept service of or receive the same, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3.) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorising an agent, may be signed or certified by an agent of the landlord authorised in writing in that behalf.

222. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorised to do must be done either by both or all those persons acting together, or by an agent authorised to act on behalf of both or all of them. Joint-landlords to act collectively or by common agent.

Powers of Revenue Officers.

223. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act to regulate the procedure to be followed by Revenue officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer— Power to make rules regarding procedure and powers of officers. Section 227.

(*a.*) Any power exercised by a Civil Court in the trial of suits;

(*b.*) Power to enter upon any land, and to survey, demarcate, and make a map of the same; and

(*c.*) Power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil.

Rules.

224. (1.) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby. Procedure for making publication and confirmation of rules. Section 228.

(2.) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and in the case of rules made by any other authority, in the prescribed manner: Provided that every such draft shall be published in the official Gazette.

(3.) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4.) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5.) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

Provisions as to Temporarily-settled Districts.

Saving as to land held in a district not permanently settled.

[C. B., ss. 6, Excep., and 17, Exception. B. B., ss. 6, Excep., and 16, Exception.] Section 26.

225. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a fixed rate of rent has been expressly recognised in settlement proceedings by a revenue authority empowered by the Government to make definitively or confirm settlements.

Power to alter rent in case of new assessment of revenue.

[D., § 42.] Section 121.

226. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a fixed rent, and while the lease or contract is in force—

(*a.*) Land revenue is for the first time made payable in respect of the land, or

(*b.*) Land revenue having been previously payable in respect of it, a fresh settlement of land revenue is made,

A revenue officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of Pasturage, &c.

Rights of pasturage, forest rights, &c.

[D., § 82. C. B., s. 3. B. B., s. 3. "Rent" and "land."] Section 230.

227. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

Savings for Special Enactments.

Savings for special laws.

[D., § 2. C. B., s. 4. Report of Rent Commission, § 3. B. B., s. 4.] Section 4.

228. Nothing in this Act shall affect—

(*a.*) The powers and duties of settlement officers as defined by any law not expressly repealed by this Act;

(*b.*) Any enactment regulating the procedure for the realisation of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue authorities;

(*c.*) Any enactment relating to the avoidance of tenancies by a sale for arrears of the Government revenue;

(*d.*) Any enactment relating to the partition of revenue-paying estates; or

(*e.*) Any other special or local law not repealed either expressly or by necessary implication by this Act.

SCHEDULE I.—(*See* SECTION 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and Year.	Subject of Regulation.	Extent of Repeal.
VIII. of 1793 -	A regulation for re-enacting with modifications and amendments, the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent taluqdárs, and other actual proprietors of land in Bengal, Bíhár, and Orissa, passed for those Provinces respectively on the 18th September 1789, the 25th November 1789, and the 10th February 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64, and 65.
XII. of 1805 -	A regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganas of Pattáspur, Kummadichour, and Bagrae, at present included in the zila of Midnapur.	Section 7.
V. of 1812 -	A regulation for amending some of the rules at present in force for the collection of the Land Revenue.	Sections 2, 3, 4, 26, and 27.
XVIII. of 1812 -	A regulation for explaining Section 2, Regulation V., 1812, and rescinding Sections 3 and 4, Regulation XLIV., 1793, and Sections 3 and 4, Regulation L., 1795, and enacting other rules in lieu thereof.	Preamble and Sections 2 and 3.
VIII. of 1819 -	A regulation to declare the validity of certain tenures, and to define the relative rights of zamíndárs and patní taluqdárs; also to establish a process for the sale of such taluqs in satisfaction of the zamíndár's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.	The whole regulation.
I. of 1820 -	A regulation for providing that all sales of certain taluqs, made answerable by sale for arrears of the zamíndár's rent, shall be conducted in the mode prescribed by Regulation VIII., 1819, for the sales therein described.	The whole regulation.
XI. of 1825 -	A regulation for declaring the rules to be observed in determining claims to lands gained by alluvion, or by dereliction of a river or the sea.	In Clause 1 of Section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

SCHEDULE I.—*continued.*

Acts of the Bengal Council.

Number and Year.	Subject of Act.	Extent of Repeal.
VI. of 1862 -	An Act to amend Act X. of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
VIII. of 1865 -	An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise, for the recovery of arrears of rent due in respect thereof.	The whole Act.
IV. of 1867 -	An Act to explain and amend Act VI. of 1862, passed by the Lieutenant Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII. of 1869 -	An Act to amend the procedure in suits between landlords and tenants.	The whole Act.
VIII. of 1879 -	An Act to define and limit the powers of settlement officers.	The whole Act.

Acts of the Governor General in Council.

Number and Year.	Subject of Act.	Extent of Repeal.
XXV. of 1850 -	An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII., 1819, and Act IV., 1846.	So much as is unrepealed.
XXXIII. of 1850 -	An Act for amending the forms necessary for the sale of patní tenures in Bengal.	The whole Act.
VI. of 1853 -	An Act relating to summary suits for arrears of rent, to sales of pátní taluqs and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.	The whole Act.
X. of 1859 -	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

SCHEDULE II.—(*See* SECTION 3 (16).)

EXTRACT from PREAMBLE to REGULATION VIII. of 1819.

"In the exercise of the privilege * * * conceded to zamíndars under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rájá of Bardwán, but has since been extended to other zamíndáris; the character of which tenure is, that it is a taluq created by the zamíndár, to be held at a rent fixed in perpetuity, by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zamíndár's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zamíndár.

"By the terms also of the engagements interchanged, it is, amongst other stipulations provided that, in case of an arrear occurring, the tenure may be brought to sale by the zamíndár, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

"These tenures have usually been denominated patní taluqs, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons who, on taking such leases, went by the name of darpatní taluqdárs; these again, sometimes similarly underlet to be patnidárs; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder."

SCHEDULE III.

FORMS OF RECEIPT AND ACCOUNT.

(*See* Sections 70 and 71.)

FORM OF RECEIPT.

1. Number
2. Year
3. Name of Village_____ Thánd _____
4. Tenant's name_____
5. Particulars of his holding (area, rent, &c.)—

Nukdi Bíghás_____ *Rs.*_____

Bauli Bíghás _____ Maunds_____ or *Rs.* _____

Sayer { Bunkur *Rs.*_____ / Julkur *Rs.*_____ / Phulkur *Rs.*_____

Government Cesses { Road Cess / Public Works Cess

6. Through whom paid_____
7. Date of payment_____
8. Amount paid (particulars on reverse) *Rs.*_____
9. Signature of Landlord or Authorized Agent

FORM OF RECEIPT.

1. Number
2. Year
3. Name of Village_____ Thánd _____
4. Tenant's name_____
5. Particulars of his holding (area, rent, &c.)—

Nukdi Bíghás_____ *Rs.*_____

Bauli Bíghás_____ Maunds_____ or *Rs.*_____

Sayer { Bunkur *Rs.*_____ / Julkur *Rs.*_____ / Phulkur *Rs.*_____

Government Cesses { Road Cess / Public Works Cess

6. Through whom paid_____
7. Date of payment_____
8. Amount paid (particulars on reverse) *Rs.*_____
9. Signature of Landlord or Authorized Agent

Section 69 of the Bengal Tenancy Act, 1884, provides as follows:—

Appropriation of Payments.

"69. (1.) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly."

"(2.) If he does not make any such declaration, the payment may be credited to the accouut of such year and instalment as the landlord thinks fit."

Date of Payment.	Nukdi.		Baouli.	Sayer.		Cesses.	
	Current.	Arrear.	Current.	Current.	Arrear.	Current.	Arrear.

Date of Payment.	Nukdi.		Baouli.	Sayer.		Cesses.	
	Current.	Arrear.	Current.	Current.	Arrear.	Current.	Arrear.

SCHEDULE III.—Forms of Receipt and Account.—(*See* Sections 70 and 71)—*continued.*

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	*Rs.*	*a.*	*p.*
Nukdi					
Government Cesses					

	Bighas	Maunds	*Rs.*	*a.*	*p.*
Baouli					
Julkur ...	...	...	...		
Bunkur ...	...	...	...		
Phulkur ...	...	...	...		

	Maunds	*Rs.*	*a.*	*p.*
4. Demand of the year ...	...	...		
5. Balance of former years (Bakaya)	...	...		

	Rs.	*a.*	*p.*
6. Total demand (current and arrear) ...	...		
7. Paid each on account of { Current demand	...		
Arrear demand	...		

	Maunds			
8. Paid in kind ...	...	...		

	Rs.	*a.*	*p.*
9. Balance outstanding at end of year			
10. Landlord's Signature			

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	*Rs.*	*a.*	*p.*
Nukdi					
Government Cesses					

	Bighas	Maunds	*Rs.*	*a.*	*p.*
Baouli					
Julkur ...	...	...	...		
Bunkur ...	...	...	...		
Phulkur ...	...	...	...		

	Maunds	*Rs.*	*a.*	*p.*
4. Demand of the year ...	...	...		
5. Balance of former years (Bakaya)	...	...		

	Rs	*a.*	*p.*
6. Total demand (current and arrear) ...	...		
7. Paid each on account of { Current demand	...		
Arrear demand	...		

	Maunds			
8. Paid in kind ...	...	...		

	Rs.	*a.*	*p.*
9. Balance outstanding at end of year			
10. Landlord's Signature			

SCHEDULE IV.—LIMITATION.

(*See* Section 218.)

PART. I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which Period begins to Run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year -	The date of the breach.
2. For the recovery of an arrear of rent—		
(*a*) When the arrear fell due before a deposit was made on account of the rent of the same holding under Section 73.	Six months -	The date of the deposit.
(*b*) In other cases - - -	Three years -	The last day of the Bengalí year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years -	The date of dispossession.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which Period begins to Run.
4. From any decree or order under this Act to the Court of a District Judge or Special Judge.	Thirty days -	The date of the decree or order appealed against.
5. From any order of a Collector under this Act to the Commissioner.	Thirty days -	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which Period begins to Run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for the sum of money exceeding 500 rupees, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree, except where the judgment-debtor has by fraud or force prevented the execution of the decree.	Three years -	(1.) The date of the decree of order; or, (2.) Where there has been an appeal, the date of the final decree or order of the Appellate Court; or, (3.) Where there has been a review of judgment, the date of the decision passed on the review.

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